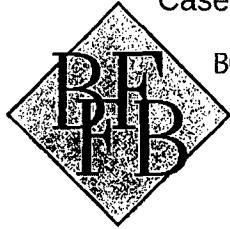






Case 2:11-cv-01615-TLN-CKD Document 10-2 Filed 07/25/11 Page 1 of 6



BONNETT, FAIRBOURN,
FRIEDMAN & BALINT, PC

JERRY C. BONNETT
FRANCIS J. BALINT, JR.
C. KEVIN DYKSTRA
ANDREW Q. EVERROAD
JONATHAN S. WALLACK
CHRISTINA L. BANNON
WILLIAM F. KING
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MANFRED P. MUECKE¹
TONNA K. FARRAR²
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LINDSEY M. GOMEZ

MICHAEL N. WIDENER, Of Counsel

¹Admitted Only in California
²Admitted Only in California, Missouri
and Kansas
³Admitted Only in Pennsylvania

June 14, 2011

**VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7009-0080-0000-4200-3898)**

Irene Fisher, Esq.
General Counsel
NBTY, Inc.
2100 Smithtown Avenue
Ronkonkoma, NY 11779

Re: Cardenas v. NBTY, Inc., *et al.*

Dear Ms. Fisher:

Our law firm represents Lilian Cardenas and all other similarly situated California Residents in an action against NBTY, Inc. ("NBTY") and Rexall Sundown, Inc. ("Rexall") (collectively, "Defendants") arising out of, *inter alia*, misrepresentations, either express or implied, by Defendants to consumers that the Osteo Bi-Flex line of joint dietary supplements¹ are effective treatments for arthritis and other joint related ailments.

Ms. Cardenas and other similarly situated California residents purchased the Osteo Bi-Flex products unaware that Defendants' representations found on the Products' labels and packages were not substantiated by competent scientific evidence, including, among others, that Osteo Bi-Flex will increase mobility, renew cartilage, and maintain healthy connective tissue. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

These representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Defendants with the intent to result in the sale of Osteo Bi-Flex to the consuming public. In fact, these representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia*,

¹ The Osteo Bi-Flex line includes: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo Bi-Flex Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-Flex Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced (collectively, "Osteo Bi-Flex" or "the Products").

Case 2:11-cv-01615-TLN-CKD Document 10-2 Filed 07/25/11 Page 2 of 6

the following subdivisions:

- (5) Representing that [Osteo Bi-Flex has] . . . characteristics, . . . uses [or] benefits . . . which [it does] not have.

* * *

- (7) Representing that [Osteo Bi-Flex is] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

- (9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

- (16) Representing that [Osteo Bi-Flex has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Defendants' claims also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all other similarly situated California residents that Defendants immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Defendants should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Defendants address this problem immediately.

Defendants must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject

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Products who reside in California;

2. Notify all such purchasers so identified that upon their request, Defendants will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;

3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Osteo Bi-Flex purchasers who so request; and

4. Cease from expressly or impliedly representing to consumers that these Products are effective at treating arthritis related symptoms or any other joint ailments when there is no reasonable basis for so claiming, as more fully described in the attached Complaint.

We await your response.

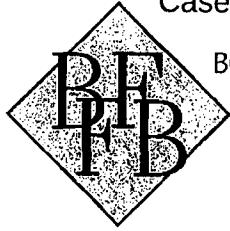
Very truly yours,



Patricia N. Syverson
For the Firm

PNS:lmg
Enclosures

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¹Admitted Only in California
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³Admitted Only in Pennsylvania

June 14, 2011

**VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7009-0080-0000-4081-5424)**

Rexall Sundown, Inc.,
General Counsel
2100 Smithtown Ave.,
Ronkonkoma, New York 11779

Re: Cardenas v. NBTY, Inc., *et al.*

Dear Sir or Madam:

Our law firm represents Lilian Cardenas and all other similarly situated California Residents in an action against NBTY, Inc. ("NBTY") and Rexall Sundown, Inc. ("Rexall") (collectively, "Defendants") arising out of, *inter alia*, misrepresentations, either express or implied, by Defendants to consumers that the Osteo Bi-Flex line of joint dietary supplements¹ are effective treatments for arthritis and other joint related ailments.

Ms. Cardenas and other similarly situated California residents purchased the Osteo Bi-Flex products unaware that Defendants' representations found on the Products' labels and packages were not substantiated by competent scientific evidence, including, among others, that Osteo Bi-Flex will increase mobility, renew cartilage, and maintain healthy connective tissue. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

These representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Defendants with the intent to result in the sale of Osteo Bi-Flex to the consuming public. In fact, these representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

¹ The Osteo Bi-Flex line includes: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo Bi-Flex Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-Flex Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced (collectively, "Osteo Bi-Flex" or "the Products").

- (5) Representing that [Osteo Bi-Flex has] . . . characteristics, . . . uses [or] benefits . . . which [it does] not have.

* * *

- (7) Representing that [Osteo Bi-Flex is] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

- (9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

- (16) Representing that [Osteo Bi-Flex has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Defendants' claims also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all other similarly situated California residents that Defendants immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Defendants should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Defendants address this problem immediately.

Defendants must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California;

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2. Notify all such purchasers so identified that upon their request, Defendants will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;

3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Osteo Bi-Flex purchasers who so request; and

4. Cease from expressly or impliedly representing to consumers that these Products are effective at treating arthritis related symptoms or any other joint ailments when there is no reasonable basis for so claiming, as more fully described in the attached Complaint.

We await your response.

Very truly yours,



Patricia N. Syverson
For the Firm

PNS:lmg
Enclosures

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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

LILIANA CARDENAS, On Behalf of
Herself and All Other Similarly Situated
California Residents,

Plaintiff,

v.

NBTY, INC., a Delaware corporation and
REXALL SUNDOWN, INC., a Florida
corporation,

Defendants.

Case No.: 2:11-CV-01615-LKK-CKD

CLASS ACTION

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*;
2. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750 *et seq.*; and
3. BREACH OF EXPRESS WARRANTY.

DEMAND FOR JURY TRIAL

Plaintiff Liliana Cardenas (“Plaintiff”) brings this action on behalf of herself and all others similarly situated against Defendants NBTY, Inc. and Rexall Sundown, Inc. (collectively “Defendants”), and alleges as follows:

NATURE OF ACTION

1. Defendants manufacture, market, sell and distribute Osteo Bi-Flex, a line of joint health dietary supplements.¹ Through an extensive, widespread, comprehensive and uniform nationwide marketing campaign, Defendants claim that their Osteo Bi-Flex products will help promote mobility, renew cartilage, maintain healthy connective tissue and improve joint comfort for all joints in the human body, for adults of all ages and for all stages or variations of joint disease or ailments. For example, on each and every Osteo Bi-Flex product label and/or package, Defendants prominently state that Osteo Bi-Flex helps to “promote mobility”, “renew cartilage”, “maintain healthy connective tissue” and improves joint comfort (hereafter referred to as the “joint renewal and rejuvenation” representations). However, the Osteo Bi-Flex products do not support joint renewal and rejuvenation. Clinical cause and effect studies have found no causative link between the ingredients in the Osteo Bi-Flex products and the prevention or lessening of joint degeneration or relief from joint discomfort. Defendants also do not have competent and reliable scientific evidence to support their representations. Defendants’ representations are false, misleading, and reasonably likely to deceive the public.

2. Despite the deceptive nature of Defendants’ representations, Defendants conveyed and continue to convey their deceptive joint renewal and rejuvenation representations through a variety of media, including in their print, radio and television advertisements, as well as on their Product packages and labeling, website and online promotional materials. The only reason a consumer would purchase the Osteo Bi-Flex

¹ The Osteo Bi-Flex line includes: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo Bi-Flex Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-Flex Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced (collectively, “Osteo Bi-Flex” or “the Products”).

products is to obtain the advertised joint health benefits, which Osteo Bi-Flex does not provide.

3. Defendants' marketing and advertising campaign is designed to cause consumers to buy Osteo Bi-Flex. Defendants' deceptive marketing and advertising campaign has succeeded. Estimated sales of joint dietary supplements including Osteo Bi-Flex, approached \$820 million in 2006.²

4. Plaintiff brings this action on behalf of herself and other similarly situated consumers who have purchased the Products to halt the dissemination of this false, misleading and deceptive advertising message, correct the false and misleading perception it has created in the minds of consumers, and obtain redress for those who have purchased the Osteo Bi-Flex products. Plaintiff alleges violations of the Unfair Competition Law, the Consumers Legal Remedies Act, and Breach of Express Warranty created by Defendants' advertising, including false labeling.

JURISDICTION AND VENUE

5. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which there are in excess of 100 class members and some of the members of the Class are citizens of states different from Defendants.

6. This Court has personal jurisdiction over Defendants because Defendants are authorized to do and do business in California. Defendants have marketed, promoted, distributed, and sold the Osteo Bi-Flex products in California and Defendants have sufficient minimum contacts with this State and/or sufficiently avail themselves of the markets in this State through their promotion, sales, distribution and marketing within this State to render the exercise of jurisdiction by this Court permissible.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)

² 2007 Nutrition Industry Overview, Nutrition Business J., *available at* <http://newhope360.com/managing-your-business/2007-nutrition-industry-overview> (last visited Apr. 4, 2011).

because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred while she resided in this judicial district. Venue is also proper under 18 U.S.C. §1965(a) because Defendants transact substantial business in this District.

PARTIES

8. Plaintiff Liliana Cardenas resides in Roseville, California. Within the last year and a half, Plaintiff Cardenas was exposed to and saw Defendants' representations by reading the front, back and sides of the Osteo Bi-Flex Regular Strength label at a Rite Aid store in Roseville, California. After reading the label, Plaintiff Cardenas purchased the Osteo Bi-Flex product to relieve her joint pain and in so doing relied on every single one of Defendants' renewal and rejuvenation representations. The Osteo Bi-Flex Regular Strength Plaintiff purchased and took as directed did not help "promote mobility", "renew cartilage", "maintain healthy connective tissue" or improve joint comfort as represented. As a result, Plaintiff suffered injury in fact and lost money. She would not have purchased the Product had she known it did not provide the advertised joint health benefits.

9. Defendant NBTY, Inc. ("NBTY") is a corporation organized and existing under the laws of the state of Delaware. Defendant NBTY's headquarters is at 2100 Smithtown Ave., Ronkonkoma, New York 11779.

10. Defendant Rexall Sundown, Inc. ("Rexall") is a corporation organized and existing under the laws of the state of Florida. Defendant Rexall's headquarters is at 2100 Smithtown Ave., Ronkonkoma, New York 11779.

11. Defendant NBTY together with Defendant Rexall Sundown, have manufactured, advertised, marketed, distributed, or sold the Osteo Bi-Flex products to tens of thousands of consumers in California and throughout the United States.

12. Plaintiff is informed and believes, and thus alleges, that at all times herein mentioned, each of the Defendants was the agent, employee, representative, partner, joint venturer, and/or alter ego of the other Defendant and, in doing the things alleged

herein, was acting within the course and scope of such agency, employment, representation, on behalf of such partnership or joint venture, and/or as such alter ego, with the authority, permission, consent, and/or ratification of the other Defendant.

FACTUAL ALLEGATIONS

The Osteo Bi-Flex Products

13. Since 1996, Defendants have developed, manufactured, marketed, distributed and sold a line of joint supplements under the Osteo Bi-Flex brand name. These Products include: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo Bi-Flex Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-Flex Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced.

14. The Osteo Bi-Flex products are sold in virtually every major food, drug, and mass retail outlet store in California, including, but not limited to: Wal-Mart, Costco Wholesale, Sam's Club, Rite-Aid, Target, and Walgreens. The Osteo Bi-Flex products are available in 30, 75, 80, 120 and 150 count bottles, retailing for approximately \$19.99 to \$44.99. The following are screen shots of the Products:





15. Since the Products' launch, Defendants have consistently conveyed the message to consumers throughout California that Osteo Bi-Flex will help to "promote mobility", "renew cartilage", "maintain healthy connective tissue" and improve joint comfort simply by taking the recommended number of tablets each day. Defendants' renewal and rejuvenation representations are false, misleading and deceptive.

16. Defendants represent that the claimed health benefits are achieved through the combination of ingredients in the Products. The primary active ingredient - glucosamine hydrochloride – is in all the Osteo Bi-Flex products. Glucosamine is an amino sugar that the body produces and distributes in cartilage and other connective tissue. There is no competent and reliable scientific evidence that taking glucosamine—let alone through oral administration—results in the body metabolizing it into something that helps to promote mobility, renew cartilage, maintain healthy connective tissue or improve joint comfort. In fact, clinical cause and effect studies have found no causative link between glucosamine hydrochloride supplementation and joint renewal or rejuvenation.

17. The Osteo Bi-Flex products also contain Defendants' 5-LOXIN Advanced, which consists of a concentrated extract of *Boswellia Serrata* ("AKBA").³ AKBA is a gum resin extracted from an herb. Defendants' claim that the AKBA results in "improvement in joint comfort within 7 days." There is no competent and reliable scientific evidence that taking AKBA—let alone through oral administration—helps to

³ Osteo Bi-Flex Regular Strength is the only product without AKBA.

“promote mobility”, “renew cartilage”, “maintain healthy connective tissue” or improve joint comfort. Clinical cause and effect studies have been unable to confirm a cause and effect relationship between AKBA supplementation and joint renewal or rejuvenation.

18. The Osteo Bi-Flex products also contain lesser amounts of other ingredients. Chondroitin sulfate is in all but one of the Products.⁴ Chondroitin sulfate is a complex carbohydrate found in the body’s connective tissues. There is no competent and reliable scientific evidence that taking chondroitin—let alone through oral administration—helps to “promote mobility”, “renew cartilage”, “maintain healthy connective tissue” or improve joint comfort. Clinical cause and effect studies have found no causative link between chondroitin supplementation and joint renewal or rejuvenation.

19. Some of the Osteo Bi-Flex products also contain methylsulfonylmethane (“MSM”), an organic sulfur compound found in fruits, corn, tomatoes, tea, coffee, and milk.⁵ There is no competent and reliable scientific evidence that taking MSM—let alone through oral administration—helps to “promote mobility”, “renew cartilage”, “maintain healthy connective tissue” or improve joint comfort. Clinical cause and effect studies have found no causative link between MSM supplementation and joint renewal or rejuvenation.

20. Some of the Osteo Bi-Flex products also contain hyaluronic acid, a component of synovial fluid found in the fluids of the eyes and joints.⁶ There is no competent and reliable scientific evidence that taking hyaluronic acid—let alone through oral administration—helps to “promote mobility”, “renew cartilage”, “maintain healthy connective tissue” or improve joint comfort. Clinical cause and effect studies have found no causative link between hyaluronic acid supplementation and joint renewal or

⁴ Osteo Bi-Flex One Per Day is the only product without chondroitin sulfate.

⁵ Osteo Bi-Flex One Per Day and Osteo Bi-Flex Regular Strength are the only products without MSM.

⁶ Osteo Bi-Flex Advanced , Osteo Bi-Flex One Per Day and Osteo Bi-Flex Regular Strength are the only products without hyaluronic acid.

rejuvenation.

21. Some of the Osteo Bi-Flex products also contain other ingredients such as vitamin D; vitamin C, manganese, boron and collagen. There is no competent and reliable scientific evidence that taking any of these ingredients—let alone through oral administration—results in the body metabolizing it into something that helps to “promote mobility”, “renew cartilage”, “maintain healthy connective tissue” or improve joint comfort. Clinical cause and effect studies have found no causative link between supplementation and joint renewal or rejuvenation.

22. The Product packages reference two studies purportedly supporting Defendants’ “shows improvement in joint comfort” representation. No identifying information is included to enable consumers to locate and review the studies. Based on the limited descriptive information provided, the studies are not competent and reliable scientific support for Defendants’ representations. In fact, clinical cause and effect studies have found no causative link between the ingredients in the Osteo Bi-Flex products and the prevention of joint degeneration or relief from joint discomfort. Thus, Defendants’ citation to these studies as support for Defendants’ joint comfort representations constitutes further deceptive and misleading conduct, in as much as the studies are not competent and reliable evidence of efficacy.

23. Even though several clinical cause and effect studies have found no causative link between any of the ingredients in the Osteo Bi-Flex products alone, or in combination, and without any scientifically valid confirmation that Osteo Bi-Flex is an effective joint treatment—let alone an effective treatment for *all* joints in the human body, for adults of *all* ages and for *all* stages of joint disease—Defendants continue to state on the Products’ packaging and labeling that Osteo Bi-Flex helps to, *inter alia*: “promote mobility”, “renew cartilage”, “maintain healthy connective tissue” and improve joint comfort. Front, back, and side shots of a representative Osteo Bi-Flex Regular Strength product label appear as follows:



Copies of all the Osteo Bi-Flex product labels are attached hereto as Exhibit A.

24. Defendants did not and do not have competent and reliable scientific evidence that any of the ingredients in their Osteo Bi-Flex products taken alone or in combination are effective at helping provide joint renewal or rejuvenation. Numerous clinical studies have resulted in a finding of no efficacy for the ingredients in the Osteo Bi-Flex products and the prevention of joint degeneration or relief from joint discomfort. Defendants' renewal and rejuvenation representations are false and misleading and reasonably likely to deceive the average consumer.

The Impact of Defendants' Wrongful Conduct

25. Despite inadequate and inapposite testing and the presence of several clinical studies that have found no causative link between the ingredients in the Osteo Bi-Flex products and joint renewal or rejuvenation, Defendants continue to unequivocally represent that the Osteo Bi-Flex products provide joint health benefits to all persons.

26. As the manufacturer and distributor of Osteo Bi-Flex, Defendants possess specialized knowledge regarding the content and effects of the ingredients contained in their products and are in a superior position to learn of the effects - and have learned of the effects - their products have on consumers.

27. Specifically, Defendants affirmatively misrepresented that the Osteo Bi-Flex products help to "promote mobility", "renew cartilage", "maintain healthy connective tissue" and improve joint comfort. Having made these affirmative misrepresentations, Defendants failed to disclose that well-conducted, clinical cause-and-effect studies have found no causative relationship between the active ingredients and the prevention of joint degeneration or relief from joint discomfort and Defendants have no competent and reliable scientific evidence that their Osteo Bi-Flex products are effective in helping provide joint renewal or rejuvenation as represented.

28. Notwithstanding these deceptive representations and material omissions, Defendants conveyed and continue to convey one uniform message: Osteo Bi-Flex will

help "promote mobility", "renew cartilage", "maintain healthy connective tissue" and improve joint comfort for all joints in the human body, for adults of all ages and for all stages of joint disease.

29. Plaintiff and Class members have been and will continue to be deceived or misled by Defendants' deceptive joint renewal and rejuvenation representations. Plaintiff purchased and consumed the Product during the Class period and in doing so, read and considered the product labels and based her decision to buy the Products on the joint renewal and rejuvenation representations. Defendants' deceptive representations and omissions were a material factor in influencing Plaintiff's decision to purchase and consume the Product. Plaintiff would not have purchased the Product had she known that Defendants' representations were false and misleading, that Defendants did not possess competent and reliable scientific evidence to support their joint renewal and rejuvenation representations, and that clinical cause-and-effect studies have found no causative link between the ingredients in Osteo Bi-Flex and joint renewal or rejuvenation.

30. As a result, Plaintiff and the Class members have been damaged in their purchases of these Products in that they were deceived into purchasing Products that they believed, based on Defendants' representations, were proven effective in improving joint mobility, renewing cartilage, maintaining healthy connective tissue and improving joint comfort when, in fact, they are not.

31. Defendants, by contrast, reaped enormous profits from their false marketing and sale of these Products.

CLASS ALLEGATIONS

32. Plaintiff brings this action on behalf of herself and all other similarly situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

All California residents who, within the applicable statute of limitations, purchased the Osteo Bi-Flex products.⁷

Excluded from the Class are Defendants, their parents, subsidiaries, affiliates, officers and directors, and those who purchased the Osteo Bi-Flex products for the purpose of resale.

33. ***Numerosity.*** The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of the Osteo Bi-Flex products who have been damaged by Defendants' conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

34. ***Existence and Predominance of Common Questions of Law and Fact.*** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

- whether the claims discussed above are true, or are misleading, or objectively reasonably likely to deceive;
- whether Defendants' alleged conduct violates public policy;
- whether the alleged conduct constitutes violations of the laws asserted;
- whether Defendants engaged in false or misleading advertising;
- whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and
- whether Plaintiff and Class members are entitled to other appropriate remedies, including corrective advertising and injunctive relief.

35. ***Typicality.*** Plaintiff's claims are typical of the claims of the members of the Class because, *inter alia*, all Class members were injured through the uniform

⁷The Osteo Bi-Flex products include: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo Bi-Flex Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-Flex Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced.

misconduct described above, were subject to Defendants' deceptive joint renewal and rejuvenation representations accompanying each and every box of the Osteo Bi-Flex products which include the same primary active ingredient – glucosamine hydrochloride – and several other common ingredients. Plaintiff is advancing the same claims and legal theories on behalf of herself and all members of the Class.

36. *Adequacy of Representation.* Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

37. *Superiority.* A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against the Defendants. It would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

38. Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent Defendants from engaging in the acts described, and requiring Defendants to provide full restitution to Plaintiff and Class members.

39. Unless a Class is certified, Defendants will retain monies received as a result of their conduct that were taken from Plaintiff and Class members. Unless a Class-wide injunction is issued, Defendants will continue to commit the violations alleged, and the members of the Class and the general public will continue to be deceived.

40. Defendants have acted and refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief with respect to the Class as a whole.

COUNT I

Violation of Business & Professions Code §17200, *et seq.*

41. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

42. Plaintiff Liliana Cardenas brings this claim individually and on behalf of the Class.

43. As alleged herein, Plaintiff has suffered injury in fact and lost money or property as a result of Defendants' conduct because she purchased Osteo Bi-Flex in reliance on Defendants' joint renewal and rejuvenation representations detailed above, but did not receive a product that supports joint renewal or rejuvenation.

44. The Unfair Competition Law, Business & Professions Code §17200, *et seq.* ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and any false or misleading advertising. In the course of conducting business, Defendants committed unlawful business practices by, *inter alia*, making the representations (which also constitutes advertising within the meaning of §17200) and omissions of material facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770 and Business & Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common law.

45. Plaintiff and the Class reserve the right to allege other violations of law,

which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

46. Defendants' actions also constitute "unfair" business acts or practices because, as alleged above, *inter alia*, Defendants engaged in false advertising, misrepresented and omitted material facts regarding their Osteo Bi-Flex product labels and packaging, and thereby offended an established public policy, and engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

47. As stated in this Complaint, Plaintiff alleges violations of consumer protection, unfair competition and truth in advertising laws, resulting in harm to consumers. Defendants' acts and omissions also violate and offend the public policy against engaging in false and misleading advertising, unfair competition and deceptive conduct towards consumers. This conduct constitutes violations of the unfair prong of Business & Professions Code §17200, *et seq.*

48. There were reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein.

49. Business & Professions Code §17200, *et seq.*, also prohibits any "fraudulent business act or practice."

50. Defendants' actions, claims, nondisclosures and misleading statements, as more fully set forth above, were also false, misleading and/or likely to deceive the consuming public within the meaning of Business & Professions Code §17200, *et seq.*

51. Plaintiff and other members of the Class have in fact been deceived as a result of their reliance on Defendants' material representations and omissions, which are described above. This reliance has caused harm to Plaintiff and other members of the Class who each purchased Defendants' Osteo Bi-Flex products. Plaintiff and the other Class members have suffered injury in fact and lost money as a result of these unlawful, unfair, and fraudulent practices.

52. As a result of their deception, Defendants have been able to reap unjust revenue and profit.

53. Unless restrained and enjoined, Defendants will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate.

54. Plaintiff, on behalf of herself and all others similarly situated, and the general public, seeks restitution and disgorgement of all money obtained from Plaintiff and the members of the Class collected as a result of unfair competition, an injunction prohibiting Defendants from continuing such practices, corrective advertising and all other relief this Court deems appropriate, consistent with Business & Professions Code §17203.

COUNT II

Violations of the Consumers Legal Remedies Act – Civil Code §1750 *et seq.*

55. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

56. Plaintiff Liliana Cardenas brings this claim individually and on behalf of the Class.

57. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §1750, *et seq.* (the “Act”). Plaintiff is a consumer as defined by California Civil Code §1761(d). Osteo Bi-Flex is a “good” within the meaning of the Act.

58. Defendants violated and continue to violate the Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of the Osteo Bi-Flex products:

- (5) Representing that [Osteo Bi-Flex has] . . . approval, characteristics, . . . uses [and] benefits . . . which [it does] not have . . .

* * *

(7) Representing that [Osteo Bi-Flex is] of a particular standard, quality or grade . . . if [it is] of another.

* * *

(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [Osteo Bi-Flex has] been supplied in accordance with a previous representation when [it has] not.

59. Defendants violated the Act by representing and failing to disclose material facts on the Osteo Bi-Flex product labels and packaging, as described above, when they knew, or should have known, that the representations were unsubstantiated, were contrary to several clinical cause and effect studies finding the ingredients in all Osteo Bi-Flex products to be inefficacious, were false and misleading and that the omissions were of material facts they were obligated to disclose.

60. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order enjoining the above-described wrongful acts and practices of Defendants and for restitution and disgorgement.

61. Pursuant to §1782 of the Act, by letters dated June 14, 2011, Plaintiff notified Defendants in writing by certified mail of the particular violations of §1770 of the Act and demanded that Defendants rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendants' intent to so act.

62. Defendants failed to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act. Therefore, Plaintiff further seeks claims for actual, punitive and statutory damages, as appropriate.

63. Defendants' conduct is malicious, fraudulent and wanton.

COUNT III

Breach of Express Warranty

64. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

65. Plaintiff Liliana Cardenas brings this claim individually and on behalf of the Class.

66. Defendants expressly warranted on each and every box of Osteo Bi-Flex that the Products help to “promote mobility”, “renew cartilage”, “maintain healthy connective tissue” and improve joint comfort. These joint renewal and rejuvenation statements made by Defendants are affirmations of fact that became part of the basis of the bargain and created an express warranty that the goods would conform to the stated promises. Plaintiff read and placed importance on Defendants’ joint renewal and rejuvenation representations.

67. All conditions precedent to Defendants’ liability under this contract have been performed by Plaintiff and the Class.

68. Defendants breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing a product that would support joint renewal and rejuvenation as represented.

69. As a result of Defendants’ breach of their contract, Plaintiff and the Class have been damaged in the amount of the price of the Products they purchased.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Class as requested herein;
- B. Awarding Plaintiff and the proposed Class members’ damages;
- C. Awarding restitution and disgorgement of Defendants’ revenues to Plaintiff and the proposed Class members;
- D. Awarding injunctive relief as permitted by law or equity, including:

enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants to identify, with Court supervision, victims of their conduct and pay them all money they are required to pay;

- E. Awarding statutory and punitive damages, as appropriate;
- F. Ordering Defendants to engage in a corrective advertising campaign;
- G. Awarding attorneys' fees and costs; and
- H. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

Dated: October 24, 2011

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

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13 **UNITED STATES DISTRICT COURT**

14 **EASTERN DISTRICT OF CALIFORNIA**

15 LILIANA CARDENAS, an Individual,
and FRANCISCO PADILLA, an
Individual, On Behalf of Themselves and
All Others Similarly Situated,

16 Plaintiffs,

17 v.

18 NBTY, INC., a Delaware corporation and
19 REXALL SUNDOWN, INC., a Florida
corporation,

20 Defendants.

21 Case No.: 2:11-CV-01615-LKK-CKD

22 **CLASS ACTION**

23 **THIRD AMENDED CLASS ACTION
COMPLAINT FOR:**

- 24 1. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 *et seq.*;
2. VIOLATION OF THE
CONSUMERS LEGAL REMEDIES
ACT, Civil Code §1750 *et seq.*;
3. VIOLATION OF THE ILLINOIS
CONSUMER FRAUD ACT, 502/1 *et
seq.*; and
4. BREACH OF EXPRESS
WARRANTY.

25 **DEMAND FOR JURY TRIAL**

26

27

28

Plaintiffs Liliana Cardenas and Francisco Padilla (“Plaintiffs”) bring this action on behalf of themselves and all others similarly situated against Defendants NBTY, Inc. and Rexall Sundown, Inc. (collectively “Defendants”), and allege as follows:

NATURE OF ACTION

1. Defendants manufacture, market, sell and distribute Osteo Bi-Flex, a line of joint health dietary supplements.¹ Through an extensive, widespread, comprehensive and uniform nationwide marketing campaign, Defendants claim that their Osteo Bi-Flex products will help promote mobility, renew cartilage, maintain healthy connective tissue and improve joint comfort for all joints in the human body, for adults of all ages and for all stages or variations of joint disease or ailments. For example, on each and every Osteo Bi-Flex product label and/or package, Defendants prominently state that Osteo Bi-Flex helps to “promote mobility”, “renew cartilage”, “maintain healthy connective tissue” and improves joint comfort (hereafter referred to as the “joint renewal and rejuvenation” representations). However, the Osteo Bi-Flex products do not support joint renewal and rejuvenation. Clinical cause and effect studies have found no causative link between the ingredients in the Osteo Bi-Flex products and the prevention or lessening of joint degeneration or relief from joint discomfort. Defendants also do not have competent and reliable scientific evidence to support their representations. Defendants’ representations are false, misleading, and reasonably likely to deceive the public.

2. Despite the deceptive nature of Defendants' representations, Defendants conveyed and continue to convey their deceptive joint renewal and rejuvenation representations through a variety of media, including in their print, radio and television advertisements, as well as on their Product packages and labeling, website and online

¹ The Osteo Bi-Flex line includes: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo Bi-Flex Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-Flex Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced (collectively, "Osteo Bi-Flex" or "the Products").

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1 promotional materials. The only reason a consumer would purchase the Osteo Bi-Flex
2 products is to obtain the advertised joint health benefits, which Osteo Bi-Flex does not
3 provide.

4 3. Defendants' marketing and advertising campaign is designed to cause
5 consumers to buy Osteo Bi-Flex. Defendants' deceptive marketing and advertising
6 campaign has succeeded. Estimated sales of joint dietary supplements including Osteo
7 Bi-Flex, approached \$820 million in 2006.²

8 4. Plaintiffs bring this action on behalf of themselves and other similarly
9 situated consumers who have purchased the Products to halt the dissemination of this
10 false, misleading and deceptive advertising message, correct the false and misleading
11 perception it has created in the minds of consumers, and obtain redress for those who
12 have purchased the Osteo Bi-Flex products. Based on violations of state unfair
13 competition laws (described below) and breach of express warranties, Plaintiffs seek
14 injunctive and monetary relief for consumers who purchased the Osteo Bi-Flex products.

15 **JURISDICTION AND VENUE**

16 5. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
17 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
18 \$5,000,000 and is a class action in which there are in excess of 100 class members and
19 some of the members of the Class are citizens of states different from Defendants.

20 6. This Court has personal jurisdiction over Defendants because Defendants
21 are authorized to do and do business in California. Defendants have marketed, promoted,
22 distributed, and sold the Osteo Bi-Flex products in California and Defendants have
23 sufficient minimum contacts with this State and/or sufficiently avail themselves of the
24 markets in this State through their promotion, sales, distribution and marketing within
25 this State to render the exercise of jurisdiction by this Court permissible.

27 ² 2007 Nutrition Industry Overview, Nutrition Business J., available at <http://newhope360.com/managing-your-business/2007-nutrition-industry-overview> (last visited Apr. 4, 2011).

1 7. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)
2 because a substantial part of the events or omissions giving rise to Plaintiffs' claims
3 occurred while Plaintiff Cardenas resided in this judicial district. Venue is also proper
4 under 18 U.S.C. §1965(a) because Defendants transact substantial business in this
5 District.

PARTIES

7 8. Plaintiff Liliana Cardenas resides in Roseville, California. Within the last
8 year and a half, Plaintiff Cardenas was exposed to and saw Defendants' representations
9 by reading the front, back and sides of the Osteo Bi-Flex Regular Strength label at a Rite
10 Aid store in Roseville, California. After reading the label, Plaintiff Cardenas purchased
11 the Osteo Bi-Flex product and in so doing relied on every single one of Defendants'
12 renewal and rejuvenation representations. The Osteo Bi-Flex Regular Strength Plaintiff
13 Cardenas purchased and took as directed did not help "promote mobility", "renew
14 cartilage", "maintain healthy connective tissue" or improve joint comfort as represented.
15 As a result, Plaintiff Cardenas suffered injury in fact and lost money. She would not
16 have purchased the Product had she known it did not provide the advertised joint health
17 benefits.

18 9. Plaintiff Francisco Padilla resides in Cook County, Illinois. In late 2010,
19 Plaintiff Padilla was exposed to and saw Defendants' representations by reading the
20 front, back and sides of the Osteo Bi-Flex Triple Strength Product at a Walgreens store in
21 Chicago, Illinois. After reading the label, Plaintiff Padilla purchased the Osteo Bi-Flex
22 product and relied on every single one of Defendants' renewal and rejuvenation
23 representations. The Osteo Bi-Flex Triple Strength Product Plaintiff Padilla purchased
24 and took as directed did not help "promote mobility", "renew cartilage", "maintain
25 healthy connective tissue" or improve joint comfort as represented. As a result, Plaintiff
26 Padilla was deceived in some manner into purchasing the Product and suffered injury in
27 fact and lost money.

10. Defendant NBTY, Inc. ("NBTY") is a corporation organized and existing under the laws of the state of Delaware. Defendant NBTY's headquarters is at 2100 Smithtown Ave., Ronkonkoma, New York 11779.

11. Defendant Rexall Sundown, Inc. ("Rexall") is a corporation organized and existing under the laws of the state of Florida. Defendant Rexall's headquarters is at 2100 Smithtown Ave., Ronkonkoma, New York 11779.

12. Defendant NBTY together with Defendant Rexall Sundown, have manufactured, advertised, marketed, distributed, or sold the Osteo Bi-Flex products to tens of thousands of consumers in California and throughout the United States.

13. Plaintiffs are informed and believe, and thus allege, that at all times herein mentioned, each of the Defendants was the agent, employee, representative, partner, joint venturer, and/or alter ego of the other Defendant and, in doing the things alleged herein, was acting within the course and scope of such agency, employment, representation, on behalf of such partnership or joint venture, and/or as such alter ego, with the authority, permission, consent, and/or ratification of the other Defendant.

FACTUAL ALLEGATIONS

The Osteo Bi-Flex Products

14. Since 1996, Defendants have developed, manufactured, marketed, distributed and sold a line of joint supplements under the Osteo Bi-Flex brand name. These Products include: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo Bi-Flex Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-Flex Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced.

15. The Osteo Bi-Flex products are sold in virtually every major food, drug, and mass retail outlet store in California, including, but not limited to: Wal-Mart, Costco Wholesale, Sam's Club, Rite-Aid, Target, and Walgreens. The Osteo Bi-Flex products

1 are available in 30, 75, 80, 120 and 150 count bottles, retailing for approximately \$19.99
2 to \$44.99. The following are screen shots of the Products:



16. Since the Products' launch, Defendants have consistently conveyed the
17 message to consumers throughout California that Osteo Bi-Flex will help to "promote
18 mobility", "renew cartilage", "maintain healthy connective tissue" and improve joint
19 comfort simply by taking the recommended number of tablets each day. Defendants'
20 renewal and rejuvenation representations are false, misleading and deceptive.

21. Defendants represent that the claimed health benefits are achieved through
22 the combination of ingredients in the Products. The primary active ingredient -
23 glucosamine hydrochloride - is in all the Osteo Bi-Flex products. Glucosamine is an
24 amino sugar that the body produces and distributes in cartilage and other connective
25 tissue. There is no competent and reliable scientific evidence that taking
26 glucosamine—let alone through oral administration—results in the body metabolizing it

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1 into something that helps to promote mobility, renew cartilage, maintain healthy
2 connective tissue or improve joint comfort. In fact, clinical cause and effect studies have
3 found no causative link between glucosamine hydrochloride supplementation and joint
4 renewal or rejuvenation.

5 18. The Osteo Bi-Flex products also contain Defendants' 5-LOXIN Advanced,
6 which consists of a concentrated extract of *Boswellia Serrata* ("AKBA").³ AKBA is a
7 gum resin extracted from an herb. Defendants' claim that the AKBA results in
8 "improvement in joint comfort within 7 days." There is no competent and reliable
9 scientific evidence that taking AKBA—let alone through oral administration—helps to
10 "promote mobility", "renew cartilage", "maintain healthy connective tissue" or improve
11 joint comfort. Clinical cause and effect studies have been unable to confirm a cause and
12 effect relationship between AKBA supplementation and joint renewal or rejuvenation.

13 19. The Osteo Bi-Flex products also contain lesser amounts of other
14 ingredients. Chondroitin sulfate is in all but one of the Products.⁴ Chondroitin sulfate is a
15 complex carbohydrate found in the body's connective tissues. There is no competent and
16 reliable scientific evidence that taking chondroitin—let alone through oral
17 administration—helps to "promote mobility", "renew cartilage", "maintain healthy
18 connective tissue" or improve joint comfort. Clinical cause and effect studies have found
19 no causative link between chondroitin supplementation and joint renewal or rejuvenation.

20 20. Some of the Osteo Bi-Flex products also contain methylsulfonylmethane
21 ("MSM"), an organic sulfur compound found in fruits, corn, tomatoes, tea, coffee, and
22 milk.⁵ There is no competent and reliable scientific evidence that taking MSM—let alone
23 through oral administration—helps to "promote mobility", "renew cartilage", "maintain
24 healthy connective tissue" or improve joint comfort. Clinical cause and effect studies

25
26 ³ Osteo Bi-Flex Regular Strength is the only product without AKBA.

27 ⁴ Osteo Bi-Flex One Per Day is the only product without chondroitin sulfate.

28 ⁵ Osteo Bi-Flex One Per Day and Osteo Bi-Flex Regular Strength are the only products without MSM.

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1 have found no causative link between MSM supplementation and joint renewal or
2 rejuvenation.

3 21. Some of the Osteo Bi-Flex products also contain hyaluronic acid, a
4 component of synovial fluid found in the fluids of the eyes and joints.⁶ There is no
5 competent and reliable scientific evidence that taking hyaluronic acid—let alone through
6 oral administration—helps to “promote mobility”, “renew cartilage”, “maintain healthy
7 connective tissue” or improve joint comfort. Clinical cause and effect studies have found
8 no causative link between hyaluronic acid supplementation and joint renewal or
9 rejuvenation.

10 22. Some of the Osteo Bi-Flex products also contain other ingredients such as
11 vitamin D; vitamin C, manganese, boron and collagen. There is no competent and
12 reliable scientific evidence that taking any of these ingredients—let alone through oral
13 administration—results in the body metabolizing it into something that helps to “promote
14 mobility”, “renew cartilage”, “maintain healthy connective tissue” or improve joint
15 comfort. Clinical cause and effect studies have found no causative link between
16 supplementation and joint renewal or rejuvenation.

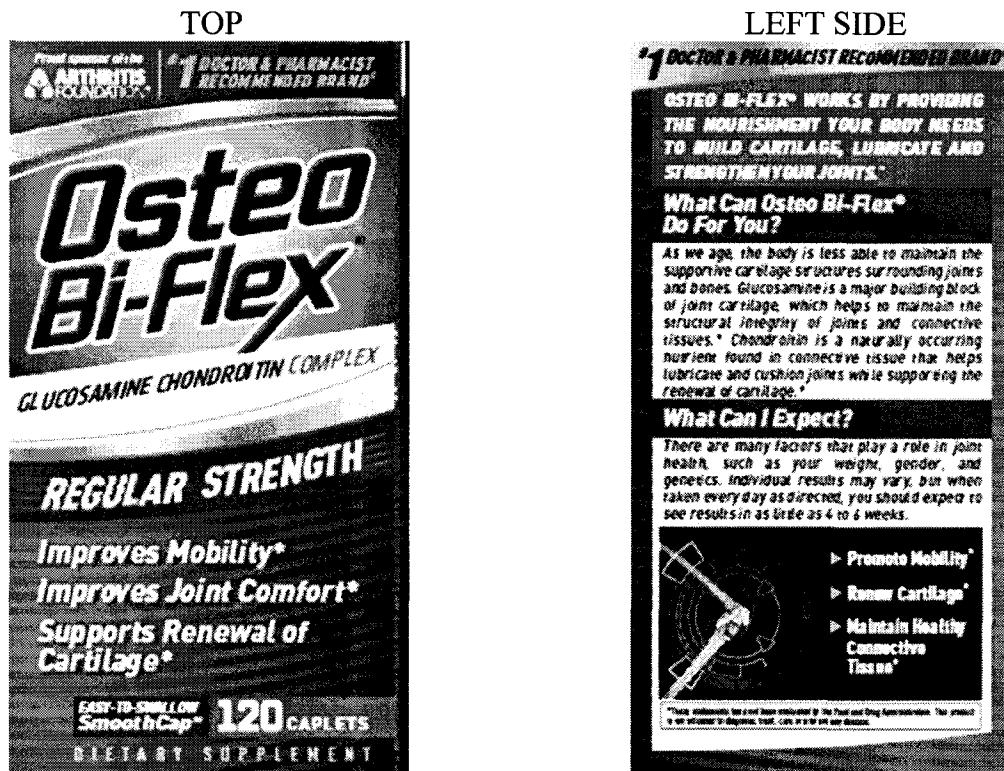
17 23. The Product packages reference two studies purportedly supporting
18 Defendants' "shows improvement in joint comfort" representation. No identifying
19 information is included to enable consumers to locate and review the studies. Based on
20 the limited descriptive information provided, the studies are not competent and reliable
21 scientific support for Defendants' representations. In fact, clinical cause and effect
22 studies have found no causative link between the ingredients in the Osteo Bi-Flex
23 products and the prevention of joint degeneration or relief from joint discomfort. Thus,
24 Defendants' citation to these studies as support for Defendants' joint comfort
25 representations constitutes further deceptive and misleading conduct, in as much as the

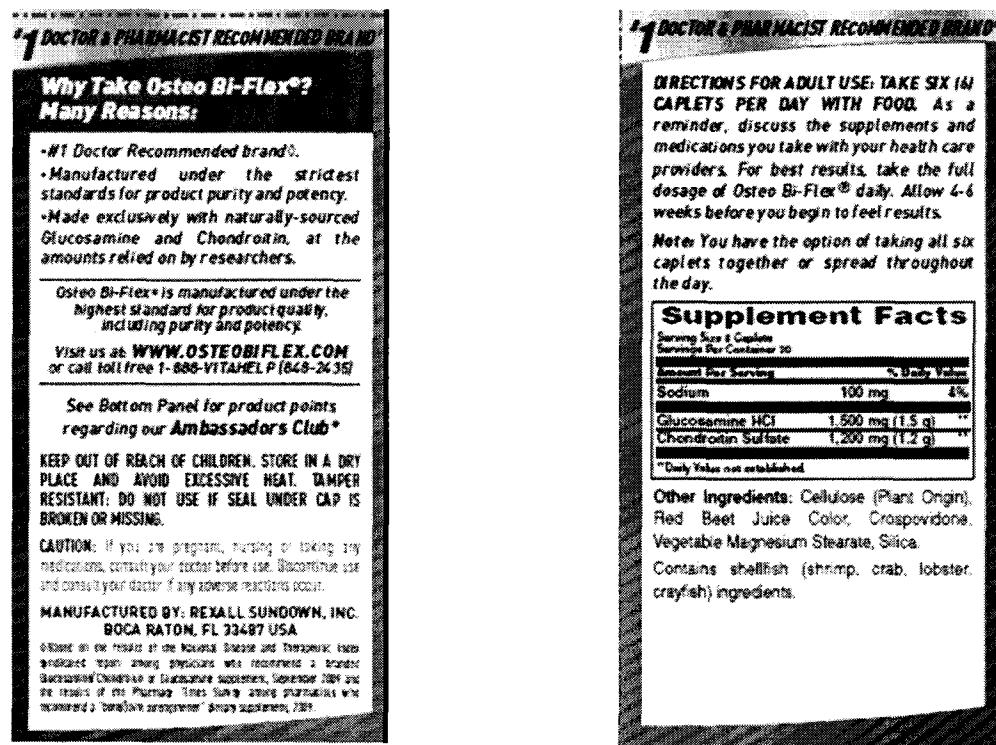
⁶ Osteo Bi-Flex Advanced, Osteo Bi-Flex One Per Day and Osteo Bi-Flex Regular Strength are the only products without hyaluronic acid.

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1 studies are not competent and reliable evidence of efficacy.

2 24. Even though several clinical cause and effect studies have found no
 3 causative link between any of the ingredients in the Osteo Bi-Flex products alone, or in
 4 combination, and without any scientifically valid confirmation that Osteo Bi-Flex is an
 5 effective joint treatment—let alone an effective treatment for *all* joints in the human body,
 6 for adults of *all* ages and for *all* stages of joint disease—Defendants continue to state on
 7 the Products' packaging and labeling that Osteo Bi-Flex helps to, *inter alia*: “promote
 8 mobility”, “renew cartilage”, “maintain healthy connective tissue” and improve joint
 9 comfort. Front, back, and side shots of a representative Osteo Bi-Flex Regular Strength
 10 product label appear as follows:





Copies of all the Osteo Bi-Flex product labels are attached hereto as Exhibit A.

25. Defendants did not and do not have competent and reliable scientific evidence that any of the ingredients in their Osteo Bi-Flex products taken alone or in combination are effective at helping provide joint renewal or rejuvenation. Numerous clinical studies have resulted in a finding of no efficacy for the ingredients in the Osteo Bi-Flex products and the prevention of joint degeneration or relief from joint discomfort. Defendants' renewal and rejuvenation representations are false and misleading and reasonably likely to deceive the average consumer.

The Impact of Defendants' Wrongful Conduct

26. Despite inadequate and inapposite testing and the presence of several clinical studies that have found no causative link between the ingredients in the Osteo Bi-Flex products and joint renewal or rejuvenation, Defendants continue to unequivocally

1 represent that the Osteo Bi-Flex products provide joint health benefits to all persons.

2 27. As the manufacturer and distributor of Osteo Bi-Flex, Defendants possess
3 specialized knowledge regarding the content and effects of the ingredients contained in
4 their products and are in a superior position to learn of the effects - and have learned of
5 the effects - their products have on consumers.

6 28. Specifically, Defendants affirmatively misrepresented that the Osteo Bi-
7 Flex products help to "promote mobility", "renew cartilage", "maintain healthy
8 connective tissue" and improve joint comfort. Having made these affirmative
9 misrepresentations, Defendants failed to disclose that well-conducted, clinical cause-and-
10 effect studies have found no causative relationship between the active ingredients and the
11 prevention of joint degeneration or relief from joint discomfort and Defendants have no
12 competent and reliable scientific evidence that their Osteo Bi-Flex products are effective
13 in helping provide joint renewal or rejuvenation as represented.

14 29. Notwithstanding these deceptive representations and material omissions,
15 Defendants conveyed and continue to convey one uniform message: Osteo Bi-Flex will
16 help "promote mobility", "renew cartilage", "maintain healthy connective tissue" and
17 improve joint comfort for all joints in the human body, for adults of all ages and for all
18 stages of joint disease.

19 30. Plaintiffs and Class members have been and will continue to be deceived or
20 misled by Defendants' deceptive joint renewal and rejuvenation representations.
21 Plaintiffs purchased and consumed the Products during the Class period and in doing so,
22 read and considered the product labels and based their decision to buy the Products on
23 the joint renewal and rejuvenation representations. Defendants' deceptive representations
24 and omissions were a material factor in influencing Plaintiffs' decision to purchase and
25 consume the Products. Plaintiffs would not have purchased the Products had they known
26 that Defendants' representations were false and misleading, that Defendants did not
27 possess competent and reliable scientific evidence to support their joint renewal and
28

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rejuvenation representations, and that clinical cause-and-effect studies have found no causative link between the ingredients in Osteo Bi-Flex and joint renewal or rejuvenation.

4 31. As a result, Plaintiffs and the Class members have been damaged in their
5 purchases of these Products in that they were deceived into purchasing Products that they
6 believed, based on Defendants' representations, were proven effective in improving joint
7 mobility, renewing cartilage, maintaining healthy connective tissue and improving joint
8 comfort when, in fact, they are not.

9 32. Defendants, by contrast, reaped enormous profits from their false
10 marketing and sale of these Products.

CLASS ALLEGATIONS

12 33. Plaintiffs bring this action on behalf of themselves and all other similarly
13 situated residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil
14 Procedure and seek certification of the following Class against Defendants for violations
15 of California and Illinois laws and similar laws in other states:

Multi-State Class Action

All persons who, within the applicable statute of limitations under their respective state's consumer fraud act, purchased the Osteo Bi-Flex products.

Excluded from the Class are Defendants, their parents, subsidiaries, affiliates, officers and directors, and those who purchased the Osteo Bi-Flex products for the purpose of resale.

21 34. In the alternative, Plaintiff Cardenas brings this action on behalf of herself
22 and all other similarly situated California residents pursuant to Rule 23(a), (b)(2), and
23 (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following
24 Class:

California-Only Class

All California residents who, within the applicable statute of limitations, purchased the Osteo Bi-Flex products.

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1 Excluded from the Class are Defendants, their parents,
2 subsidiaries, affiliates, officers and directors, and those who
3 purchased the Osteo Bi-Flex products for the purpose of resale.

4 35. In the alternative, Plaintiff Padilla brings this action on behalf of himself
5 and all other similarly situated Illinois residents pursuant to Rule 23(a), (b)(2), and (b)(3)
6 of the Federal Rules of Civil Procedure and seeks certification of the following Class:

7 **Illinois-Only Class**

8 All Illinois residents who, within the applicable statute of
9 limitations, purchased the Osteo Bi-Flex products.

10 Excluded from the Class are Defendants, their parents,
11 subsidiaries, affiliates, officers and directors, and those who
12 purchased the Osteo Bi-Flex products for the purpose of resale.

13 36. ***Numerosity.*** The members of the Class are so numerous that joinder of all
14 members of the Class is impracticable. Plaintiffs are informed and believe that the
15 proposed Class contains thousands of purchasers of the Osteo Bi-Flex products who have
16 been damaged by Defendants' conduct as alleged herein. The precise number of Class
17 members is unknown to Plaintiffs.

18 37. ***Existence and Predominance of Common Questions of Law and Fact.***
19 This action involves common questions of law and fact, which predominate over any
20 questions affecting individual Class members. These common legal and factual questions
21 include, but are not limited to, the following:

- 22 • whether the claims discussed above are true, or are misleading, or
23 objectively reasonably likely to deceive;
- 24 • whether Defendants' alleged conduct violates public policy;
- 25 • whether the alleged conduct constitutes violations of the laws
26 asserted;
- 27 • whether Defendants engaged in false or misleading advertising;
28 • whether Plaintiffs and Class members have sustained monetary loss
 and the proper measure of that loss; and

1 • whether Plaintiffs and Class members are entitled to other
2 appropriate remedies, including corrective advertising and injunctive relief.

3 38. ***Typicality.*** Plaintiffs' claims are typical of the claims of the members of
4 the Class because, *inter alia*, all Class members were injured through the uniform
5 misconduct described above, were subject to Defendants' deceptive joint renewal and
6 rejuvenation representations accompanying each and every box of the Osteo Bi-Flex
7 products which include the same primary active ingredient – glucosamine hydrochloride
8 – and several other common ingredients. Plaintiffs are advancing the same claims and
9 legal theories on behalf of themselves and all members of the Class.

10 39. ***Adequacy of Representation.*** Plaintiffs will fairly and adequately protect
11 the interests of the members of the Class. Plaintiffs have retained counsel experienced in
12 complex consumer class action litigation, and Plaintiffs intend to prosecute this action
13 vigorously. Plaintiffs have no adverse or antagonistic interests to those of the Class.

14 40. ***Superiority.*** A class action is superior to all other available means for the
15 fair and efficient adjudication of this controversy. The damages or other financial
16 detriment suffered by individual Class members is relatively small compared to the
17 burden and expense that would be entailed by individual litigation of their claims against
18 the Defendants. It would thus be virtually impossible for the Class, on an individual
19 basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class
20 members could afford such individualized litigation, the court system could not.
21 Individualized litigation would create the danger of inconsistent or contradictory
22 judgments arising from the same set of facts. Individualized litigation would also
23 increase the delay and expense to all parties and the court system from the issues raised
24 by this action. By contrast, the class action device provides the benefits of adjudication
25 of these issues in a single proceeding, economies of scale, and comprehensive
26 supervision by a single court, and presents no unusual management difficulties under the
27 circumstances here.

1 41. Plaintiffs seek preliminary and permanent injunctive and equitable relief on
2 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin
3 and prevent Defendants from engaging in the acts described, and requiring Defendants to
4 provide full restitution to Plaintiffs and Class members.

5 42. Unless a Class is certified, Defendants will retain monies received as a
6 result of their conduct that were taken from Plaintiffs and Class members. Unless a
7 Class-wide injunction is issued, Defendants will continue to commit the violations
8 alleged, and the members of the Class and the general public will continue to be
9 deceived.

10 43. Defendants have acted and refused to act on grounds generally applicable
11 to the Class, making appropriate final injunctive relief with respect to the Class as a
12 whole.

COUNT I

15 44. Plaintiff Cardenas repeats and re-alleges the allegations contained in the
16 paragraphs above, as if fully set forth herein.

17 45. Plaintiff Cardenas brings this claim individually and on behalf of the Class.

18 46. As alleged herein, Plaintiff Cardenas has suffered injury in fact and lost
19 money or property as a result of Defendants' conduct because she purchased Osteo Bi-
20 Flex in reliance on Defendants' joint renewal and rejuvenation representations detailed
21 above, but did not receive a product that supports joint renewal or rejuvenation.

22 47. The Unfair Competition Law, Business & Professions Code §17200, *et seq.*
23 (“UCL”) and similar laws in other states, prohibit any “unlawful,” “fraudulent” or
24 “unfair” business act or practice and any false or misleading advertising. In the course of
25 conducting business, Defendants committed unlawful business practices by, *inter alia*,
26 making the representations (which also constitutes advertising within the meaning of
27 §17200) and omissions of material facts, as set forth more fully herein, and violating

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1 Civil Code §§1572, 1573, 1709, 1711, 1770 and Business & Professions Code §§17200,
2 *et seq.*, 17500, *et seq.*, and the common law.

3 48. Plaintiff Cardenas and the Class reserve the right to allege other violations
4 of law, which constitute other unlawful business acts or practices. Such conduct is
5 ongoing and continues to this date.

6 49. Defendants' actions also constitute "unfair" business acts or practices
7 because, as alleged above, *inter alia*, Defendants engaged in false advertising,
8 misrepresented and omitted material facts regarding their Osteo Bi-Flex product labels
9 and packaging, and thereby offended an established public policy, and engaged in
10 immoral, unethical, oppressive, and unscrupulous activities that are substantially
11 injurious to consumers.

12 50. As stated in this Complaint, Plaintiff Cardenas alleges violations of
13 consumer protection, unfair competition and truth in advertising laws in California and
14 other states, resulting in harm to consumers. Defendants' acts and omissions also violate
15 and offend the public policy against engaging in false and misleading advertising, unfair
16 competition and deceptive conduct towards consumers. This conduct constitutes
17 violations of the unfair prong of Business & Professions Code §17200, *et seq.*

18 51. There were reasonably available alternatives to further Defendants'
19 legitimate business interests, other than the conduct described herein.

20 52. Business & Professions Code §17200, *et seq.*, also prohibits any
21 "fraudulent business act or practice."

22 53. Defendants' actions, claims, nondisclosures and misleading statements, as
23 more fully set forth above, were also false, misleading and/or likely to deceive the
24 consuming public within the meaning of Business & Professions Code §17200, *et seq.*

25 54. Plaintiff Cardenas and other members of the Class have in fact been
26 deceived as a result of their reliance on Defendants' material representations and
27 omissions, which are described above. This reliance has caused harm to Plaintiff
28

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1 Cardenas and other members of the Class who each purchased Defendants' Osteo Bi-
2 Flex products. Plaintiff Cardenas and the other Class members have suffered injury in
3 fact and lost money as a result of these unlawful, unfair, and fraudulent practices.

4 55. As a result of their deception, Defendants have been able to reap unjust
5 revenue and profit.

6 56. Unless restrained and enjoined, Defendants will continue to engage in the
7 above-described conduct. Accordingly, injunctive relief is appropriate.

8 57. Plaintiff Cardenas, on behalf of herself and all others similarly situated, and
9 the general public, seeks restitution and disgorgement of all money obtained from
10 Plaintiff Cardenas and the members of the Class collected as a result of unfair
11 competition, an injunction prohibiting Defendants from continuing such practices,
12 corrective advertising and all other relief this Court deems appropriate, consistent with
13 Business & Professions Code §17203.

14 **COUNT II**

15 **Violations of the Consumers Legal Remedies Act – Civil Code §1750 *et seq.***
(Applicable to a Multi-State or California-Only Class)

16 58. Plaintiff Cardenas repeats and re-alleges the allegations contained in the
17 paragraphs above, as if fully set forth herein.

18 59. Plaintiff Cardenas brings this claim individually and on behalf of the Class.

19 60. This cause of action is brought pursuant to the Consumers Legal Remedies
20 Act, California Civil Code §1750, *et seq.* (the "Act"), and similar laws in other states.
21 Plaintiff Cardenas is a consumer as defined by California Civil Code §1761(d). Osteo
22 Bi-Flex is a "good" within the meaning of the Act.

23 61. Defendants violated and continue to violate the Act by engaging in the
24 following practices proscribed by California Civil Code §1770(a) in transactions with
25 Plaintiff Cardenas and the Class which were intended to result in, and did result in, the
26 sale of the Osteo Bi-Flex products:

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1 (5) Representing that [Osteo Bi-Flex has] . . . approval, characteristics, . . . uses
2 [and] benefits . . . which [it does] not have . . .

* * *

4 (7) Representing that [Osteo Bi-Flex is] of a particular standard, quality or
5 grade . . . if [it is] of another.

* * *

7 (9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [Osteo Bi-Flex has] been supplied in accordance with a previous representation when [it has] not.

11 62. Defendants violated the Act by representing and failing to disclose material
12 facts on the Osteo Bi-Flex product labels and packaging, as described above, when they
13 knew, or should have known, that the representations were unsubstantiated, were
14 contrary to several clinical cause and effect studies finding the ingredients in all Osteo
15 Bi-Flex products to be inefficacious, were false and misleading and that the omissions
16 were of material facts they were obligated to disclose.

17 63. Pursuant to §1782(d) of the Act, Plaintiff Cardenas and the Class seek a
18 court order enjoining the above-described wrongful acts and practices of Defendants and
19 for restitution and disgorgement.

20 64. Pursuant to §1782 of the Act, by letters dated June 14, 2011, Plaintiff
21 Cardenas notified Defendants in writing by certified mail of the particular violations of
22 §1770 of the Act and demanded that Defendants rectify the problems associated with the
23 actions detailed above and give notice to all affected consumers of Defendants' intent to
24 so act.

25 65. Defendants failed to rectify or agree to rectify the problems associated with
26 the actions detailed above and give notice to all affected consumers within 30 days of the
27 date of written notice pursuant to §1782 of the Act. Therefore, Plaintiff Cardenas further

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1 seeks claims for actual, punitive and statutory damages, as appropriate.

2 66. Defendants' conduct is malicious, fraudulent and wanton.

3 **COUNT III**

4 **Violation of the Illinois Consumer Fraud Act
(Applicable to a Multi-State or Illinois-Only Class)**

5 67. Plaintiff Padilla re-alleges and incorporates by reference the allegations
6 contained in the paragraphs above as if fully set forth herein.

7 68. In Illinois, the "Consumer Fraud and Deceptive Business Practices Act" 815
8 Ill. Comp. Stat. 502/1, *et seq.* ("the Act"), like the consumer fraud acts of numerous other
9 states across the nation, prohibits deceptive acts and practices in the sale of such products
10 as Defendants' Osteo Bi-Flex products.

11 69. Plaintiff Padilla and the Class were injured by Defendants' deceptive
12 misrepresentations, concealments and omissions and these misrepresentations,
13 concealments and omissions were material and deceived Plaintiff Padilla and the Class.

14 70. Defendants do business in Illinois, sell and distribute their Osteo Bi-Flex
15 products in Illinois, and engaged in deceptive acts and practices in connection with the
16 sale of the same both in Illinois and elsewhere in the United States.

17 71. Defendants' Products purchased by Plaintiff Padilla and the Class were
18 "consumer items" as that term is defined under the Act.

19 72. Defendants misrepresented and deceptively concealed, suppressed and/or
20 omitted the material information known to Defendants as set forth above concerning their
21 Osteo Bi-Flex products which has caused damage and injury to Plaintiff Padilla and the
22 Class.

23 73. Defendants' deceptive acts occurred in a course of conduct involving trade
24 and commerce in Illinois and throughout the United States.

25 74. Defendants' deceptive acts proximately caused actual injury and damage to
26 Plaintiff Padilla and the Class.

27 75. Defendants intended Plaintiff Padilla and all Class members to rely on their

28

representations.

76. The conduct of the Defendants constituted a consumer fraud under the Illinois Consumer Fraud Act and similar laws in other states.

COUNT IV
Breach of Express Warranty
(Applicable to a Multi-State, California-Only or Illinois-Only Class)

77. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

78. Plaintiffs Liliana Cardenas and Francisco Padilla bring this claim individually and on behalf of the Class.

79. Defendants expressly warranted on each and every box of Osteo Bi-Flex that the Products help to “promote mobility”, “renew cartilage”, “maintain healthy connective tissue” and improve joint comfort. These joint renewal and rejuvenation statements made by Defendants are affirmations of fact that became part of the basis of the bargain and created an express warranty that the goods would conform to the stated promises. Plaintiffs read and placed importance on Defendants’ joint renewal and rejuvenation representations.

80. All conditions precedent to Defendants' liability under this contract have been performed by Plaintiffs and the Class.

81. Defendants breached the terms of this contract, including the express warranties, with Plaintiffs and the Class by not providing a product that would support joint renewal and rejuvenation as represented.

82. As a result of Defendants' breach of their contract, Plaintiffs and the Class have been damaged in the amount of the price of the Products they purchased.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for a judgment:

A. Certifying the Class as requested herein;

- B. Awarding Plaintiffs and the proposed Class members' damages;
- C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiffs and the proposed Class members;
- D. Awarding injunctive relief as permitted by law or equity, including: enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants to identify, with Court supervision, victims of their conduct and pay them all money they are required to pay;
- E. Awarding statutory and punitive damages, as appropriate;
- F. Ordering Defendants to engage in a corrective advertising campaign;
- G. Awarding attorneys' fees and costs; and
- H. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

Dated: October 30, 2012

**BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.**

s/ Patricia N. Syverson

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have served the foregoing document via Electronic Mail to:

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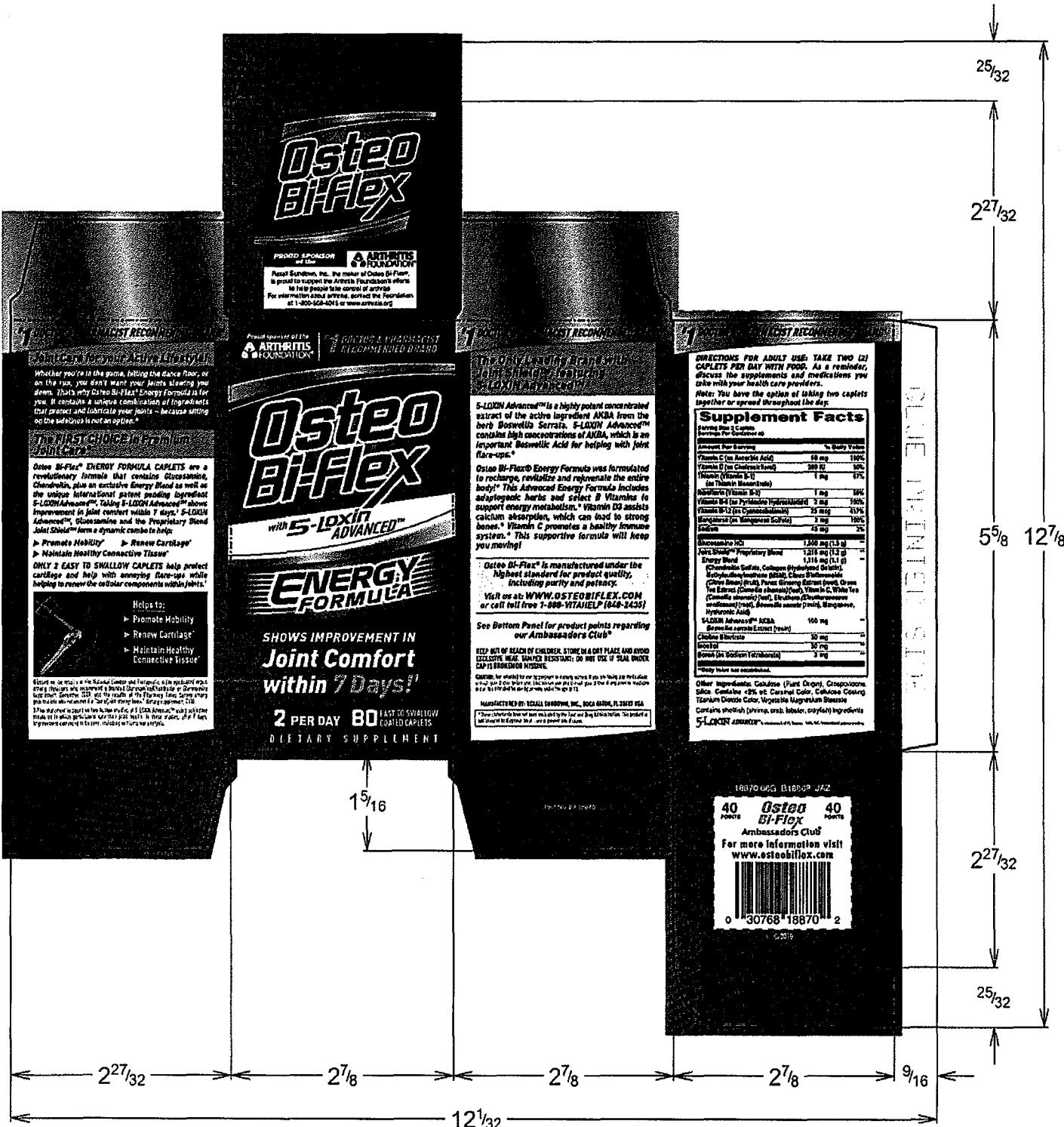
I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 30, 2012.

By: s/Patricia N. Syverson
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EXHIBIT A







Osteo Bi-Flex

Proud Sponsor of the **ARTHRITIS FOUNDATION**
Perry Sundown, Inc., the maker of Osteo Bi-Flex, is proud to support the Arthritis Foundation's efforts to help people take control of arthritis. For information about arthritis, contact the Foundation at 1-800-523-4045 or visit www.arthritis.org

Proud sponsor of the **ARTHRITIS FOUNDATION** #1 DOCTOR & PHARMACIST RECOMMENDED BRAND

Osteo Bi-Flex
GLUCOSAMINE CHONDROITIN
with **5-LOXIN ADVANCED™**

MSM
Hyaluronic Acid

Helps Build Cartilage and Lubricate Joints!*

EASY-TO-SWALLOW SmoothCap® 120 COATED CAPLETS
DIETARY SUPPLEMENT

Helps to:
 ▶ Promote Mobility*
 ▶ Renew Cartilage*
 ▶ Maintain Healthy Connective Tissue*

KEEP OUT OF REACH OF CHILDREN. STORE IN A DRY PLACE AND AVOID EXCESSIVE HEAT. TAMPER RESISTANT: DO NOT USE IF SEAL UNDER CAP IS BROKEN OR MISSING.

CAUTION: If you are pregnant, nursing or taking any medications, consult your doctor before use. Supplement may not be necessary unless if you have medical needs. For children under the age of 18, consult a physician.

MANUFACTURED BY: PERRY SUNDOWN, INC., BOCA RATON, FL 33487 USA

*Based on the results of the Ralston Utzma and its subsequent synthesis studies. These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

The Only Leading Brand With Joint Shield™, featuring 5-LOXIN Advanced™

5-LOXIN Advanced™ is a highly potent concentrated extract of the active ingredient AKBA from the herb *Boswellia Serrata*.

Osteo Bi-Flex® MSM with Hyaluronic Acid is a potent synergistic combination of highly effective ingredients in "Joint Care Science" and the only leading brand containing Joint Shield™.

Osteo Bi-Flex® is manufactured under the highest standard for product quality, including purity and potency.

Visit us at: WWW.OSTEOBIFLEX.COM or call toll free 1-888-VITACHEL (848-2435)

See Bottom Panel for product points regarding our Ambassadors Club*

DIRECTIONS FOR ADULT USE: TAKE FOUR (4) CAPLETS PER DAY WITH FOOD. As a reminder, discuss the supplements and medications you take with your health care providers.

Note: You have the option of taking four caplets together or spread throughout the day.

Supplement Facts

Serving Size 4 Caplets	Amount Per Serving	% Daily Value
Calories 30		
Vitamin C (as Ascorbic Acid)	80 mg	100%
Manganese (as Manganese Sulfate)	2 mg	100%
Sodium	40 mg	2%
Glucosamine HCl	1,500 mg (1.5 g)**	
Joint Shield™ Proprietary Blend	2,060 mg	
MSM/Chondroitin/S-LOXIN Advanced™ Complex (Methylsulfonylmethane (MSM), Chondroitin Sulfate, Collagen (Hydrolyzed Gelatin), <i>Boswellia serrata</i> (resin), Vitamin C, S-LOXIN Advanced™ AKBA, <i>Boswellia serrata</i> Extract (resin), Manganese, Hyaluronic Acid)		
Sodium (as Sodium Tetaborate)	3 mg	

**Daily Value not established.

Other Ingredients: Cellulose (Plant Origin), Crospovidone. Contains <2% of: Caramel Color, Celulose Coating, Silica, Titanium Dioxide Color, Vegetable Magnesium Stearate. Contains shellfish (shrimp, crab, lobster, crayfish) ingredients.

5-LOXIN ADVANCED™ is a trademark of PTC Health, LLC, LLC International patent pending

Part No. 22-57009

44907 05E 518617 JAZ

60 POINTS **Osteo Bi-Flex** 60 POINTS
Ambassadors Club
For more information visit www.osteobiflex.com

Barcode: 0 30768 03452 8
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Osteo Bi-Flex®

Proud Sponsor of the ARTHRITIS FOUNDATION®

Rexall Sundown, Inc., the maker of Osteo Bi-Flex®, is proud to support the Arthritis Foundation's efforts to help people live better with arthritis. For information about arthritis, contact the Foundation at 1-800-555-4045 or www.arthritis.org.

Proud sponsor of the ARTHRITIS FOUNDATION® DOCTOR & PHARMACIST RECOMMENDED BRAND

Osteo Bi-Flex® ONE PER DAY

GLUCOSAMINE HCl & Vitamin D3 with 5-LOXIN ADVANCED™

SHOWS IMPROVEMENT IN Joint Comfort within 7 Days!™

Helps to:

- Promote Mobility*
- Renew Cartilage*
- Maintain Healthy Connective Tissue*

Just one* Osteo Bi-Flex® ONE PER DAY caplet is all you need to help protect cartilage, revitalize connective tissue, and help ease occasional joint stress.*

1. This statement is based on two human studies of 5-LOXIN Advanced™ using subjective measures in which participants were their own controls. In these studies, after 7 days, improvements continued to be seen, including in bone mineral density.

COATED FOR EASE OF SWALLOWING

30 COATED CAPLETS

DIETARY SUPPLEMENT

5-LOXIN Advanced™ is a highly potent concentrated extract of the active ingredient AKBA from the herb *Boswellia Serrata*. 5-LOXIN Advanced™ contains high concentrations of AKBA, which is an important Boswellic Acid for helping with joint flare-ups.*

Osteo Bi-Flex® ONE PER DAY features high potency Vitamin D3 which promotes immune health and supports bone strength.* By promoting bone health, Vitamin D3 acts synergistically with our joint nutrients as bones and joints work together to create comfortable movement.* Osteo Bi-Flex® ONE PER DAY Caplets with Vitamin D are a potent synergistic combination of highly effective ingredients in "Joint Care Science."™

Osteo Bi-Flex® is manufactured under the highest standard for product quality, including purity and potency.

Visit us at: WWW.OSTEOBIFLEX.COM or call toll free 1-888-VITACHEL (842-2435).

See Bottom Panel for product points regarding our Ambassadors Club®

MANUFACTURED BY: REXALL SUNDOWN, INC., BOCA RATON, FL 33487 USA

*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

DIRECTIONS FOR ADULT USE: TAKE ONE (1) CAPLET PER DAY WITH FOOD. As a reminder, discuss the supplements and medications you take with your health care providers.

Supplement Facts

Serving Size 1 Caplet	Amount Per Serving	%Daily Value
	Vitamin D (as D3 Cholecalciferol)	400 IU 100%
	Glucosamine HCl	1,500 mg (1.5 g) **
	5-LOXIN Advanced™ AKBA	100 mg **
	Boswellia serrata Extract (resin)	

**Daily Value not established.

Other Ingredients: Cellulose (Plant Origin), Croscarmellose. Contains <2% of: Cellulose Coating, Povidone, Titanium Dioxide Color, Vegetable Magnesium Stearate.

Contains shellfish (shrimp, crab, lobster, crayfish) ingredients.

KEEP OUT OF REACH OF CHILDREN. STORE IN A DRY PLACE AND AVOID EXCESSIVE HEAT. TAMPER RESISTANT: DO NOT USE IF SEAL UNDER CAP IS BROKEN OR MISSING.

CAUTION: If you are pregnant, nursing or taking any medications, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18.

5-LOXIN ADVANCED™ is a trademark of 5-Loxin, Inc. LLC International patent pending.

Part No. 22-33040

33049 91B B2N49 LAZ

20 POINTS **Osteo Bi-Flex®** **20 POINTS**

Ambassadors Club®

For more information visit www.osteobiflex.com

Barcode: 0 30768 33049 1

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Osteo Bi-Flex®

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to help people take control of arthritis.
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at 1-800-658-4045 or www.arthritis.org

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Osteo Bi-Flex®
GLUCOSAMINE CHONDROITIN COMPLEX

REGULAR STRENGTH

Improves Mobility*
Improves Joint Comfort*
Supports Renewal of Cartilage*

EASY-TO-SWALLOW SmoothCap® 120 CAPLETS
DIETARY SUPPLEMENT

*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

Why Take Osteo Bi-Flex®?
Many Reasons:

- #1 Doctor Recommended brand*
- Manufactured under the strictest standards for product purity and potency.
- Made exclusively with naturally-sourced Glucosamine and Chondroitin, at the amounts relied on by researchers.

Osteo Bi-Flex® is manufactured under the highest standard for product quality, including purity and potency.
Visit us at: WWW.OSTEOBIFLEX.COM or call toll free 1-888-VITAHLP (848-2438)

See Bottom Panel for product points regarding our Ambassadors Club®

KEEP OUT OF REACH OF CHILDREN. STORE IN A DRY PLACE AND AVOID EXCESSIVE HEAT. TAMPER RESISTANT: DO NOT USE IF SEAL UNDER CAP IS BROKEN OR MISSING.

CAUTION: If you are pregnant, nursing or taking any medications, consult your doctor before use. Discontinue use and consult your doctor if any adverse reactions occur.

MANUFACTURED BY: REXALL SUNDOWN, INC.
BOCA RATON, FL 33487 USA

Based on the results of the National Disease and Therapeutic Index syndicated report among physicians who recommended a branded Glucosamine/Chondroitin or Glucosamine supplement, September 2007 and the results of the Pharmacy Times Survey among pharmacists who recommended a "benign joint symptom" dietary supplement, 2007.

DIRECTIONS FOR ADULT USE: TAKE SIX (6) CAPLETS PER DAY WITH FOOD. As a reminder, discuss the supplements and medications you take with your health care providers. For best results, take the full dosage of Osteo Bi-Flex® daily. Allow 4-6 weeks before you begin to feel results.

Note: You have the option of taking all six caplets together or spread throughout the day.

Supplement Facts

Serving Size & Caplets	Servings Per Container	% Daily Value
Amount Per Serving		
Sodium	100 mg	4%
Glucosamine HCl	1,500 mg (1.5 g)	**
Chondroitin Sulfate	1,200 mg (1.2 g)	**

**Daily Value not established.

Other Ingredients: Cellulose (Plant Origin), Red Beet Juice Color, Crospovidone, Vegetable Magnesium Stearate, Silica.

Contains shellfish (shrimp, crab, lobster, crayfish) ingredients.

Part No. 226780
44772 CAD B3879 GAZ

20 POINTS **Osteo Bi-Flex 20 POINTS**
Ambassadors Club®
For more information visit www.osteobiflex.com

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Osteo Bi-Flex

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The Only LEADING BRAND With Joint Shield™, featuring 5-LOXIN Advanced™

Osteo Bi-Flex® TRIPLE STRENGTH CAPLETS are a revolutionary formula that contains Glucosamine, Chondroitin, MSM and Vitamin D3, as well as the unique international patent pending ingredient 5-LOXIN Advanced™. Taking 5-LOXIN Advanced™ shows improvement in joint comfort within 7 days.¹ 5-LOXIN Advanced™, Glucosamine and the Proprietary Blend Joint Shield™ form a dynamic combo to help:

- Promote Mobility
- Renew Cartilage
- Maintain Healthy Connective Tissue

ONLY 2 EASY TO SWALLOW CAPLETS help protect cartilage and help with annoying flare-ups while helping to renew the cellular components within joints.²

1. See studies in issue 10, 1999 of *J. of Clinical Pharmacy* using 5-LOXIN Advanced™. In these studies, patients taking 5-LOXIN Advanced™ showed improvement compared to those taking 5-LOXIN Advanced™, Glucosamine and Chondroitin.

Helps to:

- Promote Mobility
- Renew Cartilage
- Maintain Healthy Connective Tissue

SHOWS IMPROVEMENT IN Joint Comfort within 7 Days!

2 PER DAY 80 EASY TO SWALLOW COATED CAPLETS
DIETARY SUPPLEMENT

5-LOXIN Advanced™ is a highly potent concentrated extract of the active ingredient AKBA from the herb *Boswellia Serrata*. 5-LOXIN Advanced™ contains high concentrations of AKBA, which is an important Boswellic Acid for helping with joint flare-ups.³

Osteo Bi-Flex® Triple Strength features high potency Vitamin D3 which promotes immune health and supports bone strength and mineralization.⁴ By promoting bone health, Vitamin D3 acts synergistically with our triple strength joint nutrients as bones and joints work together to create comfortable movement.⁵ Osteo Bi-Flex® TRIPLE STRENGTH CAPLETS are a potent synergistic combination of highly effective ingredients in "Joint Care Science" and the only leading brand containing Joint Shield™.

Osteo Bi-Flex® is manufactured under the highest standard for product quality, including purity and potency.

Visit us at: WWW.OSTEOBIFLEX.COM or call toll free 1-888-VITAEHELP (948-2435)

See Bottom Panel for product points regarding our Ambassadors Club[®]

KEEP OUT OF REACH OF CHILDREN. STORE IN A DRY PLACE AND AVOID EXCESSIVE HEAT. TAMPER RESISTANT. DO NOT USE IF SEAL UNDER CAP IS BROKEN OR MISSING.

CARTON: If you're pregnant, nursing, or taking any medications, consult your doctor before taking this product. If you experience any adverse reactions, stop taking and consult your doctor.

MANUFACTURED BY: REZALIS SUNDOWN, INC., BOCA RATON, FL 33477 USA

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

DIRECTIONS FOR ADULT USE: TAKE TWO (2) CAPLETS PER DAY WITH FOOD. As a reminder, discuss the supplements and medications you take with your health care providers.

Note: You have the option of taking two caplets together or spread throughout the day.

Supplement Facts

Amount Per Serving	%Daily Value
Vitamin C (as Ascorbic Acid)	60 mg 100%
Vitamin D (as D3 Cholecalciferol)	2,000 IU 500%
Manganese (as Manganese Sulfate)	2 mg 100%
Sodium	40 mg 2%
Glucosamine HCl	1,500 mg (15 g) **
Joint Shield™ Proprietary Blend	1,250 mg (13.5 g) **
Chondroitin/MSM Complex	1,250 mg (13.5 g) **
(Chondroitin Sulfate, Methylsulfonylmethane (MSM), Collagen (Hydrolyzed Collagen), Boswellia serrata (tree), Vitamin C, Manganese, Hyaluronic Acid, 5-LOXIN Advanced™ AKBA 100 mg **	
Boswellia serrata Extract (resin)	3 mg **
Soybean (as Sodium Borate)	3 mg **

**Daily Value not established.

Other Ingredients: Crospovidone, Contains <2% oil; Caramel Color, Cellulose (Plant Origin), Cellulose Coating, Silica, Titanium Dioxide Color, Vegetable Magnesium Stearate.

Contains shellfish (shrimp, crab, lobster, crayfish) ingredients.

Part No. 02-19607

40 POINTS Osteo Bi-Flex 40 POINTS Ambassadors Club
For more information visit www.osteobiflex.com

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Osteo Bi-Flex®

Proud Sponsor of the **ARTHRITIS FOUNDATION**

RECALL SUNDOWN, Inc., the maker of Osteo Bi-Flex, is proud to support the Arthritis Foundation's efforts to help people take control of arthritis.

For information on arthritis and to support the Foundation at 1-800-558-4045 or www.arthritis.org

Proud sponsor of the **ARTHRITIS FOUNDATION** DOCTOR & PHARMACIST RECOMMENDED BRAND

Osteo Bi-Flex®
GLUCOSAMINE CHONDROITIN MSM
with 5-LOXIN ADVANCED™
TRIPLE STRENGTH

SHOWS IMPROVEMENT IN Joint Comfort within 7 Days!

A2 PER DAY 120 EASY TO SWALLOW COATED CAPLETS
DIETARY SUPPLEMENT

The Only LEADING BRAND With Joint Shield™, featuring 5-LOXIN Advanced™

5-LOXIN Advanced™ is a highly potent concentrated extract of the active ingredient AKA from the herb *Boswellia Serrata*. 5-LOXIN Advanced™ contains high concentrations of AKA, which is an important Boswellic Acid for helping with joint flare-ups.*

Osteo Bi-Flex® TRIPLE STRENGTH CAPLETS are a potent synergistic combination of highly effective ingredients in "Joint Care Science" and the only leading brand containing Joint Shield™.

Osteo Bi-Flex® is manufactured under the highest standard for product quality, including purity and potency.

Visit us at: WWW.OSTEOBIFLEX.COM or call toll free 1-888-VITAEHP (848-2435)

See Bottom Panel for product points regarding our Ambassadors Club®

1. Based on the results of the National Survey and Therapeutic Index conducted by expert physicians who recommended a joint supplement. Chondroitin & Glucosamine is popular, but Osteo Bi-Flex® is the only triple strength supplement containing Joint Shield™, a "multi-antipsoriasis" dietary supplement. (14)

DIRECTIONS FOR ADULT USE: TAKE TWO (2) CAPLETS PER DAY WITH FOOD. As a reminder, discuss the supplements and medications you take with your health care providers.

Note: You have the option of taking two caplets together or spread throughout the day.

Supplement Facts

Serving Size: 2 Caplets	Servings Per Container: 60
Amount Per Serving	% Daily Value
Vitamin C (as Ascorbic Acid)	60 mg 100%
Manganese (as Manganese Sulfate)	2 mg 100%
Sodium	40 mg 2%
Glucosamine HCl	1,500 mg (1.5 g) **
Joint Shield™ Proprietary Blend	1,350 mg (1.35 g) **
Chondroitin/MSM Complex	1,320 mg (1.32 g) **
(Chondroitin Sulfate, Methylsulfonylmethane (MSM), Collagen (Hydrolyzed Gelatin), <i>Boswellia serrata</i> (herb), Vitamin C, Manganese, Hyaluronic Acid)	
5-LOXIN Advanced™ AKA	100 mg **
<i>Boswellia serrata</i> Extract (herb)	
Boron (as Sodium Tetraborate)	3 mg **

**Daily Value not established.

Other Ingredients: Crospovidone. Contains **Caramel Color, Cellulose (Plant Origin), Cellulose Coating, Silica, Titanium Dioxide Color, Vegetable Magnesium Stearate.**

Contains shellfish (shrimp, crab, lobster, crayfish) ingredients.

5-LOXIN Advanced™ is a trademark of A Home - like, Inc. Unpatented generic pending.

44959 11J B16923 HAZ

60 POINTS **Osteo Bi-Flex** **60 POINTS**

Ambassadors Club®

For more information visit www.osteobiflex.com

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RICHARD JENNINGS, on behalf of himself
And all others similarly situated,

Civil Action No.

Plaintiff,

Class Action Complaint

-against-

Jury Trial Demanded

REXALL SUNDOWN, Inc.

Defendant.

Plaintiff, by and through his counsel, Meiselman, Denlea, Packman, Carton & Eberz P.C., brings this class action lawsuit on behalf of himself and a class of similarly-situated individuals who have purchased an "Osteo Bi-Flex" product manufactured by Defendant from August 10, 2007 through the present.

PARTIES

1. Plaintiff Richard Jennings ("Jennings") is a natural person of full age of majority who is domiciled and residing in Oak Bluffs, Massachusetts.
2. Defendant Rexall Sundown, Inc. ("Rexall") is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Bohemia, New York.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). Jurisdiction is proper because (1) the matter in controversy

exceeds the sum or value of \$5,000,000.00, exclusive of interests and costs and (2) the named Plaintiff and the Defendant are citizens of different states. 28 U.S.C. §1332(d)(2)(A).

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) because a substantial part of the events giving rise to the claim occurred within this judicial district, and because defendant has marketed and sold the products at issue in this action within this judicial district and has done business within this judicial district.

GENERAL ALLEGATIONS

5. Rexall is the manufacturer and seller of a wide variety of vitamin, nutritional and dietary supplement products.

6. One of Rexall's most successful products is a line of dietary supplements sold under the trademarked name Osteo Bi-Flex. The Osteo Bi-Flex product line is a line of products that contain, among other contents, glucosamine and chondroitin. The annual sales of the Osteo Bi-Flex products are in excess of \$100 million. The Osteo Bi-Flex products are sold nationwide in drug stores, supermarkets, warehouse clubs and mass merchandisers, including Wal-Mart, Sam's Club, CVS, Duane Reade and Target. Rexall extensively advertises its Osteo Bi-Flex product line in consumer and trade media with national distribution, and also maintains a website devoted exclusively to its Osteo Bi-Flex line of products (<http://www.osteobiflex.com>).

7. All of Rexall's products in its Osteo Bi-Flex product line contain glucosamine, chondroitin and/or a methylsulfonylmethane.

8. The Osteo Bi-Flex product line currently includes the following:

Osteo Bi-Flex One Per Day Glucosamine HCl & Vitamin D3 with 5-Loxin Advanced;

Osteo Bi-Flex Triple Strength Glucosamine Chondroitin MSM with 5-Loxin Advanced;

Osteo Bi-Flex Double Strength Glucosamine Chondroitin MSM with 5-Loxin Advanced;

Osteo Bi-Flex Triple Strength Glucosamine Chondroitin MSM with 5-Loxin Advanced with Vitamin D3 2000 IU;

Osteo Bi-Flex Glucosamine Chondroitin with 5-Loxin Advanced MSM with Hyaluronic Acid;

Osteo Bi-Flex Glucosamine Chondroitin Energy Formula with 5-Loxin Advanced;

Osteo Bi-Flex Regular Strength Glucosamine Chondroitin Complex; and

Osteo Bi-Flex Advanced Glucosamine Chondroitin MSM with 5-Loxin Advanced.

9. Millions of adults in the United States live with arthritis, a disease involving the breakdown of cartilage in joints, or other orthopedic disorders in which cartilage in joints is broken down over time and causes bones in those joints to grind against each other. Cartilage normally protects a joint, allowing it to move smoothly, and also absorbs shock when pressure is placed on the joint. Without normal amounts of cartilage, the bones in the joint rub together, causing pain, swelling and stiffness. These conditions are often extremely painful and result in limitations on motion, and most often impact elderly persons.

10. In response to the desperation of consumers suffering from painful and debilitating arthritic and other orthopedic conditions, dietary supplement manufacturers have rolled out a variety of products promising relief from chronic pain. Manufacturers pushing for more market share have not been content to advertise pain relief, and have been making more and more outlandish promises to consumers, including promises that supplements can promote joint health and mobility through structural changes to joints.

11. Defendant Rexall is one such manufacturer. Rexall manufactures, markets, and sells the Osteo Bi-Flex products, which contain glucosamine hydrochloride, chondroitin and/or a methylsulfonylmethane.

12. Glucosamine is an amino sugar that the body distributes in cartilage. It is produced commercially from crustacean exoskeletons, and is one of the most common, non-vitamin dietary supplements sold in the United States.

13. Chondroitin is a sulfated glycosaminoglycan composed of a chain of alternating sugars. Chondroitin sulfate is a structural component of cartilage and provides resistance to compression.

14. Methylsulfonylmethane is an organic compound containing sulfur, and is considered to be a relatively inert chemical compound.

15. None of these ingredients will help build or renew cartilage or repair damage to joints.

16. Nonetheless, Rexall promotes that its Osteo Bi-Flex products will help "renew cartilage." The packages that the Osteo Bi-Flex products come in contain, in a boxed section of the packaging and also in a textual section of the packaging, the statement that the products help "renew cartilage." In fact, the package that Osteo Bi-Flex Glucosamine Chondroitin with 5-Loxin Advanced MSM with Hyaluronic Acid comes in actually claims that the product "helps build cartilage." The website that advertises the Osteo Bi-Flex line of products, which is sponsored by Rexall, states, as part of the advertising for several of the products contained in the product line, that "glucosamine helps rejuvenate joint cartilage."

17. The statement that the Osteo Bi-Flex products help "renew cartilage" is false and misleading. There is no scientifically sound study demonstrating that the Rexall Osteo Bi-Flex

products can help renew cartilage. The statement that the Osteo Bi-Flex products help "renew cartilage" is not substantiated.

18. There is no study or literature substantiating, or even suggesting, that glucosamine, chondroitin, or methylsulfonylmethane can help renew or rejuvenate cartilage, as studies on the topic have confirmed:

a. In February 2006, the New England Journal of Medicine published a report on a double blind study addressing in part the efficacy of ingesting glucosamine hydrochloride 1500mg. Clegg, et al. Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful Knee Osteoarthritis. *New Eng. J. Med.* 354:795-808 (Feb. 2006). The study concluded that there was no showing that the supplement was effective in treating osteoarthritis.

b. In February 2008, the Annals of Internal Medicine published a study entitled, "Effect of Glucosamine Sulfate on Hip Osteoarthritis: a Randomized Trial." *Annals of Internal Medicine* 2008 Feb 19;148(4): 268-277. The article published the results of a study which examined whether glucosamine sulfate has an effect on the symptoms and structural progression of hip osteoarthritis during two years of treatment; the conclusion reached from the study was that glucosamine sulfate was no better than placebo in reducing symptoms and progression of hip osteoarthritis.

c. In October 2008, the American College of Rheumatology's *Journal, Arthritis & Rheumatism*, published a report on a double blind

study conducted at multiple centers in the United States examining joint space width loss with radiograph films in patients who were treated with glucosamine hydrochloride. The authors concluded that after two years of treatment with this supplement, the treatment did not demonstrate a clinically important difference in joint space width loss. Sawitzke et al., Glucosamine for Pain in Osteoarthritis: Why do Trial Results Differ?, Arthritis Rheum. 58:3183-3191 (2008).

d. In March 2009, Harvard Medical School published a study conclusively proving that the ingestion of glucosamine could not affect the growth of cartilage. The study took note of the foregoing 2006 and 2008 studies, which "cast considerable doubt" upon the value of glucosamine. The authors went on to conduct an independent study of subjects ingesting 1500 mg of glucosamine, and proved that only trace amounts of glucosamine entered the human serum, far below any amount that could possibly affect cartilage. Moreover, even those trace amounts were present only for a few hours after ingestion. The authors noted that a 1986 study had found no glucosamine in human plasma after ingestion of four times the usual 1500 mg of glucosamine chloride or sulphate. Silbert, Dietary Glucosamine Under Question, Glycobiology 19(6):564-567 (2009).

e. In April 2009, the Journal of Orthopaedic Surgery published an article entitled, "Review Article: Glucosamine." The article's authors concluded that, based on their literature review, there was "little or no

evidence" to suggest that glucosamine was superior to a placebo even in slowing down cartilage deterioration, much less rebuilding it. Kirkham, et al., Review Article: Glucosamine, Journal of Orthopaedic Surgery, 17(1): 72-6 (2009).

19. To date, there are only two studies purporting to claim that the ingestion of glucosamine can affect the growth or deterioration of cartilage, both sponsored by a glucosamine supplement manufacturer: Pavelka et. al. Glucosamine Sulfate Use and Delay of Progression of Knee Osteoarthritis, Arch. Intern. Med., 162: 2113-2123 (2002); Reginster et. al. Long-term Effects of Glucosamine Sulphate On Osteoarthritis Progress: A Randomised, Placebo-Controlled Clinical Trial, Lancet, 357: 251-6 (2001). As noted in the April 2009 Journal of Orthopaedic Surgery article, the methodologies in those studies had "inherently poor reproducibility," and even minor changes in posture by the subjects during scans could cause false apparent changes in cartilage. The authors of the Journal of Orthopaedic Surgery article explained the manufacturer-sponsored studies' findings by noting that "industry-sponsored trials report positive effects more often than do nonsponsored trials and more find pro-industry results."

20. There is no study that supports the claim that glucosamine, chondroitin and/or methylsulfonylmethane, either alone or in combination, will restore, rebuild, renew or rejuvenate joint cartilage that has broken down or worn away.

21. Rexall sells its Osteo Bi-Flex line of products in the United States as a dietary supplement in the United States. The Osteo Bi-Flex products are not regulated as a drug.

22. Rexall sells its Osteo Bi-Flex line of products without any competent and reliable scientific evidence that glucosamine, chondroitin and/or and methylsulfonylmethane will help to "renew cartilage." At no time has Rexall had any competent, reliable or scientific evidence to

support its claim that its Osteo Bi-Flex line of products will help "renew cartilage." Rexall lacked a reasonable basis to represent to consumers that its Osteo Bi-Flex products help "renew cartilage," and did not have a reasonable basis to make the express claim that its Osteo Bi-Flex products will help "renew cartilage." It lacks adequate evidence to substantiate its claim that its Osteo Bi-Flex products help "renew cartilage," and therefore lacks any reasonable basis for the claim that the products help "renew cartilage."

23. Plaintiff has purchased Osteo Bi-Flex products. He purchased most of the Osteo Bi-Flex products from Walmart or BJ's Wholesale Club, and purchased the products for his personal use. The packages containing the Osteo Bi-Flex products that Plaintiff purchased all contained the statement that the product helps "renew cartilage."

24. Plaintiff purchased the Osteo Bi-Flex products because he believed, based upon the packaging, that the products would help renew or rebuild the cartilage in his knee. When he purchased the Osteo Bi-Flex products, Plaintiff believed that they would help renew and rebuild the cartilage in his knee based upon the statements contained on the packages containing the products. His belief that the products would help "renew cartilage" in his knee was reasonable because Rexall, as a manufacturer and distributor of dietary supplements throughout the United States, has superior knowledge, skill and expertise than Plaintiff to appreciate the truth or falsity of the statement that the products help "renew cartilage." And he reasonably relied upon the statement that the products would "renew cartilage" when he purchased the products.

25. Plaintiff would not have bought the Osteo Bi-Flex products if he had known that they would not help "renew" his cartilage.

CLASS ACTION ALLEGATIONS

26. Plaintiff seeks to be appointed as class representative of a class composed of and defined as follows:

All persons who bought any Osteo Bi-Flex product in Massachusetts, and did not resell it during the period from August 10, 2007 through the present. Excluded from the Class are the Defendant and any Judge presiding over this matter and the members of his or her immediate family. Also excluded from this class are the legal representatives, heirs, successors and attorneys of any excluded person or entity, and any person acting on behalf of any excluded person or entity.

27. This action is appropriately suited for a class action. Plaintiff is informed, believes and thereon alleges that the Class is sufficiently numerous, such that a class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Massachusetts purchasers of the Osteo Bi-Flex products is impractical.

28. This action involves questions of law and fact common to the Class. In marketing the Osteo Bi-Flex products, Defendant engaged in a systematic course of misrepresenting the products to Massachusetts consumers. Such common issues of law and fact include but are not limited to:

- a. Whether the representation that Osteo Bi-Flex products help "renew cartilage" was and is likely to mislead consumers;
- b. Whether failing to disclose that Osteo Bi-Flex products would not promote renewal of cartilage was likely to mislead consumers;
- c. Whether Defendant made false or misleading representations regarding the effectiveness of the Osteo Bi-Flex products;
- d. Whether Defendant represented that the Osteo Bi-Flex products have benefits which they do not have;
- e. Whether Defendant represented that the Osteo Bi-Flex products were of a particular standard or quality when they were not;

f. Whether Defendant advertised the Osteo Bi-Flex products with intent not to sell it as advertised;

g. Whether, as a result of Defendant's misconduct, the Class is entitled to equitable relief, including restitution and injunctive relief;

h. Whether the Class obtained the benefit of their bargain in purchasing the Osteo Bi-Flex products;

i. Whether Defendant was unjustly enriched in collecting money from sales of the Osteo Bi-Flex products; and

j. Whether, as a result of Defendant's misconduct, the Class is entitled to damages.

29. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and available remedies.

30. Plaintiff's claims are typical of the claims of members of the Class, and Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff purchased Osteo Bi-Flex products, and suffered an injury-in-fact as a result of Defendant's conduct, as did all Class members. Plaintiff's interests are coincident with and not antagonistic to those of the other members of the Class. Plaintiff is represented by counsel who is competent and experienced in the prosecution of consumer class action litigation.

31. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated purchasers of the Osteo Bi-Flex products to adjudicate simultaneously their common claims in a single forum in an efficient manner, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many members of the Class who could not afford individually to

litigate the claims pleaded in this Complaint. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION
(Violations of Unfair Trade Practices Act, Mass. Gen. Laws ch. 93A)

32. Plaintiff hereby realleges, and incorporates by reference as though set forth fully herein, the allegations contained in Paragraphs 1 through 31.

33. Through their conduct described above, including but not limited to breaching the express warranty that the Osteo Bi-Flex products help "renew cartilage," Defendant has engaged in deceptive acts and practices in violation of the Massachusetts Unfair Trade Practices Act, Mass. Gen. Laws ch. 93A §§ 2 et seq. ("MUTPA"), the stated terms and intent of which is to protect consumers from unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.

34. Plaintiff satisfied the demand requirement set forth in Mass. Gen. Law. Ch 93A §9(3). Plaintiff sent a written demand letter to Defendant on May 12, 2011, which was received by Defendant, and the claim asserted herein has not been compromised or adjusted.

35. Representing that the Osteo Bi-Flex products help "renew cartilage" when there is not competent or reliable scientific evidence substantiating that claim is deceptive, and has the capacity, tendency and effect of deceiving reasonable consumers who purchase the products. Reasonable consumers would believe that the Osteo Bi-Flex products help renew cartilage, based upon Defendant's misrepresentations to that effect.

36. Defendant knew, or should have known, that the representation that its Osteo Bi-Flex products help "renew cartilage" was not substantiated by competent and reliable scientific evidence.

37. Defendant made, and makes, the representation that its Osteo Bi-Flex products help "renew cartilage" with the intent to induce consumers, and members of the class sought herein, to purchase the products by causing them to rely on the representation that the products will help "renew cartilage."

38. Defendants' unfair or deceptive practices were a willing and knowing violation of MUTPA.

39. Plaintiff and the Class have suffered an ascertainable loss of money or property as a result of Defendant's actions.

40. By reason of the foregoing, Defendant has violated MUTPA and is liable to Plaintiff and the Class, pursuant to Mass. Gen. Laws ch. 93A §§ 2 et seq., for the damages that they have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial but not less than \$25.00 per consumer purchase, plus trebling and attorneys' fees.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

41. Plaintiff hereby realleges, and incorporates by reference as though set forth fully herein, the allegations contained in Paragraphs 1 through 31.

42. Plaintiff and the Class have conferred benefits on Defendant by paying money for the Osteo Bi-Flex products.

43. Defendant knowingly and willingly accepted monetary benefits from Plaintiff and the Class, but Defendant did not honor its obligations. Rather, Defendant benefited from the sales of the Osteo Bi-Flex products without providing the value promised.

44. Under the circumstances described herein, it is inequitable for Defendant to retain the full monetary benefit at the expenses of Plaintiff and the Class.

45. By engaging in the conduct described above, Defendant has been unjustly enriched at the expense of Plaintiff and the Class, and is required, in equity and good conscience, to compensate Plaintiff and the Class for harm suffered as a result of its actions.

46. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and the Class have suffered injury and are entitled to reimbursement, restitution, and disgorgement by Defendant of the benefit conferred by Plaintiff and the Class.

THIRD CAUSE OF ACTION
(Breach of Express Warranty)

47. Plaintiff hereby realleges, and incorporates by reference as though set forth fully herein, the allegations contained in Paragraphs 1 through 31.

48. Plaintiff and each member of the Class formed a contract with Defendant at the time Plaintiff and the other members of the Class purchased the Osteo Bi-Flex products. The terms of that contract include the promises and affirmations of fact made by Defendant on its product labels. The product labeling constitutes an express warranty which became part of the basis of the bargain. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiff and the Class.

49. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing a product which could provide the promised benefits as described above.

50. As a result of Defendant's breach of its contract and warranties, Plaintiff and the Class have been damaged in the amount of the purchase price of the Osteo Bi-Flex products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that the Court enter judgment against Defendants as follows:

1. Certifying this action as a class action as soon as practicable, with a class as defined above;
2. On Plaintiff's First Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial, trebled;
3. On Plaintiff's Second Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial;
4. On Plaintiff's Third Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial;
5. Awarding Plaintiff and the Class interest, costs and attorneys' fees; and
6. Awarding Plaintiff and the Class such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

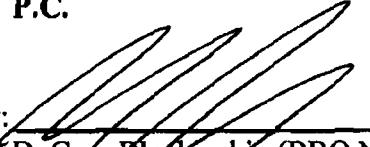
Pursuant to Federal Rule of Civil Procedure Rule 38, Plaintiff hereby demands a trial by jury.

DATED: August 22, 2011

Respectfully submitted,

**MEISELMAN, DENLEA,
PACKMAN, CARTON & EBERZ
P.C.**

By:


D. Greg Blankinship (BBO No. 655430)
1311 Mamaroneck Avenue
White Plains, New York 10605
Tel: (914) 517-5000
Fax: (914) 517-5055
gblankinship@mdpcelaw.com

Attorneys for Plaintiff Richard Jennings,
individually and on behalf of himself and
all others similarly situated

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Richard Jennings, on behalf of himself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Dukes (MA)
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Meiselman, Denlea, Packman, Carton & Eberz P.C., 1311
 Mamaroneck Avenue, White Plains, NY 10605 (914) 517-5000

DEFENDANTS

Rexall, Sundown, Inc.

Suffolk (NY)

County of Residence of First Listed Defendant

~~(IN U.S. PLAINTIFF CASES ONLY)~~

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	Citizen of Another State	PTF	DEF
<input checked="" type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
<input type="checkbox"/>	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/>	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 510 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/>	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge	
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/>	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 863 D/WC/DIW (405(g))	<input type="checkbox"/> 12 USC 3410	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 791 Emp. Ret. Inc. Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 867 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/>	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 870 IRS—Third Party 26 USC 7609	<input type="checkbox"/>	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 871 Other Civil Rights	<input type="checkbox"/>	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 872 Naturalization Application	<input type="checkbox"/>	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/>	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/>	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/>		<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/>	<input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN

(Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(d)

Brief description of cause:

False and misleading advertising

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S)

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/22/2011

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

AMOUNT

APPLYING IFF

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Richard Jennings v. Rexall Sundown, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 536, 830*, 891, 893, 894, 895, R.23, REGARDLESS OF NATURE OF SUIT.
 II. 110, 130, 140, 160, 190, 196, 230, 240, 290, 320, 362, 370, 371, 380, 430, 440, 442-448, 710, 720, 730, 740, 780, 820*, 840*, 850, 870, 871.
 III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 368, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 610, 620, 625, 830, 840, 650, 660, 690, 791, 810, 861-865, 875, 890, 892, 900, 950.

*Also complete AO 120 or AO 121 for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME D. Greg Blankinship, Meiselman, Denlea, Packman, Carton & Eberz P.C.

ADDRESS 1311 Mamaroneck Avenue, White Plains, NY 10605

TELEPHONE NO. (914) 517-5000

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Maryland

RICHARD JENNINGS, on behalf of himself and all
others similarly situated,)

Plaintiff)

v.) Civil Action No.
REXALL SUNDOWN, Inc.)

Defendant)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Rexall Sundown, Inc.
90 Orville Drive
Bohemia, New York 11716

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: D. Greg Blankinship
Meiselman, Denlea, Packman, Carton & Eberz P.C.
1311 Mamaroneck Avenue
White Plains, New York 10605

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RICHARD JENNINGS, on behalf of himself
And all others similarly situated,

Civil Action No.: 1:11-cv-11488-WGY

Plaintiff,

**FIRST AMENDED CLASS
ACTION COMPLAINT**

-against-

REXALL SUNDOWN, INC.

**LEAVE TO FILE GRANTED
ON DECEMBER 19, 2011**

Defendant.

Jury Trial Demanded

Plaintiff, by and through his counsel, Meiselman, Denlea, Packman, Carton & Eberz P.C., respectfully files this First Amended Class Action Complaint on behalf of himself and a class of similarly-situated individuals who have purchased an "Osteo Bi-Flex" product manufactured by Defendant from August 10, 2007 through the present.

PARTIES

1. Plaintiff Richard Jennings ("Jennings") is a natural person of full age of majority who is domiciled and residing in Oak Bluffs, Massachusetts.
2. Defendant Rexall Sundown, Inc. ("Rexall") is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Bohemia, New York.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). Jurisdiction is proper because (1) the matter in controversy

exceeds the sum or value of \$5,000,000.00, exclusive of interests and costs and (2) the named Plaintiff and the Defendant are citizens of different states. 28 U.S.C. §1332(d)(2)(A).

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) because a substantial part of the events giving rise to the claim occurred within this judicial district, and because defendant has marketed and sold the products at issue in this action within this judicial district and has done business within this judicial district.

GENERAL ALLEGATIONS

5. Rexall is the manufacturer and seller of a wide variety of vitamin, nutritional and dietary supplement products.

6. One of Rexall's most successful products is a line of dietary supplements sold under the trademarked name Osteo Bi-Flex. The Osteo Bi-Flex product line is a line of products that contain, among other contents, glucosamine and chondroitin. The annual sales of the Osteo Bi-Flex products are in excess of \$100 million. The Osteo Bi-Flex products are sold nationwide in drug stores, supermarkets, warehouse clubs and mass merchandisers, including Wal-Mart, Sam's Club, CVS, Duane Reade and Target. Rexall extensively advertises its Osteo Bi-Flex product line in consumer and trade media with national distribution, and also maintains a website devoted exclusively to its Osteo Bi-Flex line of products (<http://www.osteobiflex.com>).

7. All of Rexall's products in its Osteo Bi-Flex product line contain glucosamine, chondroitin and/or a methylsulfonylmethane.

8. The Osteo Bi-Flex product line currently includes the following:

Osteo Bi-Flex One Per Day Glucosamine HCl & Vitamin D3 with 5-Loxin Advanced;

Osteo Bi-Flex Triple Strength Glucosamine Chondroitin MSM with 5-Loxin Advanced;

Osteo Bi-Flex Double Strength Glucosamine Chondroitin MSM with 5-Loxin Advanced;

Osteo Bi-Flex Triple Strength Glucosamine Chondroitin MSM with 5-Loxin Advanced with Vitamin D3 2000 IU;

Osteo Bi-Flex Glucosamine Chondroitin with 5-Loxin Advanced MSM with Hyaluronic Acid;

Osteo Bi-Flex Glucosamine Chondroitin Energy Formula with 5-Loxin Advanced;

Osteo Bi-Flex Regular Strength Glucosamine Chondroitin Complex; and

Osteo Bi-Flex Advanced Glucosamine Chondroitin MSM with 5-Loxin Advanced.

9. Millions of adults in the United States live with arthritis, a disease involving the breakdown of cartilage in joints, or other orthopedic disorders in which cartilage in joints is broken down over time and causes bones in those joints to grind against each other. Cartilage normally protects a joint, allowing it to move smoothly, and also absorbs shock when pressure is placed on the joint. Without normal amounts of cartilage, the bones in the joint rub together, causing pain, swelling and stiffness. These conditions are often extremely painful and result in limitations on motion, and most often impact elderly persons.

10. In response to the desperation of consumers suffering from painful and debilitating arthritic and other orthopedic conditions, dietary supplement manufacturers have rolled out a variety of products promising relief from chronic pain. Manufacturers pushing for more market share have not been content to advertise pain relief, and have been making more and more outlandish promises to consumers, including promises that supplements can promote joint health and mobility through structural changes to joints.

11. Defendant Rexall is one such manufacturer. Rexall manufactures, markets, and sells the Osteo Bi-Flex products, which contain glucosamine hydrochloride, chondroitin and/or a methylsulfonylmethane.

12. Glucosamine is an amino sugar that the body distributes in cartilage. It is produced commercially from crustacean exoskeletons, and is one of the most common, non-vitamin dietary supplements sold in the United States.

13. Chondroitin is a sulfated glycosaminoglycan composed of a chain of alternating sugars. Chondroitin sulfate is a structural component of cartilage and provides resistance to compression.

14. Methylsulfonylmethane is an organic compound containing sulfur, and is considered to be a relatively inert chemical compound.

15. None of these ingredients will help build or renew cartilage or repair damage to joints.

16. Nonetheless, Rexall promotes that its Osteo Bi-Flex products will help "renew cartilage." The packages that the Osteo Bi-Flex products come in contain, in a boxed section of the packaging and also in a textual section of the packaging, the statement that the products help "renew cartilage." In fact, the package that Osteo Bi-Flex Glucosamine Chondroitin with 5-Loxin Advanced MSM with Hyaluronic Acid comes in actually claims that the product "helps build cartilage." The website that advertises the Osteo Bi-Flex line of products, which is sponsored by Rexall, states, as part of the advertising for several of the products contained in the product line, that "glucosamine helps rejuvenate joint cartilage."

17. The statement that the Osteo Bi-Flex products help "renew cartilage" is false and misleading. There is no scientifically sound study demonstrating that the Rexall Osteo Bi-Flex

products can help renew cartilage. The statement that the Osteo Bi-Flex products help "renew cartilage" is not substantiated.

18. There is no study or literature substantiating, or even suggesting, that glucosamine, chondroitin, or methylsulfonylmethane can help renew or rejuvenate cartilage, as studies on the topic have confirmed:

a. In February 2006, the New England Journal of Medicine published a report on a double blind study addressing in part the efficacy of ingesting glucosamine hydrochloride 1500mg. Clegg, et al. Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful Knee Osteoarthritis. *New Eng. J. Med.* 354:795-808 (Feb. 2006). The study concluded that there was no showing that the supplement was effective in treating osteoarthritis.

b. In February 2008, the Annals of Internal Medicine published a study entitled, "Effect of Glucosamine Sulfate on Hip Osteoarthritis: a Randomized Trial." *Annals of Internal Medicine* 2008 Feb 19;148(4): 268-277. The article published the results of a study which examined whether glucosamine sulfate has an effect on the symptoms and structural progression of hip osteoarthritis during two years of treatment; the conclusion reached from the study was that glucosamine sulfate was no better than placebo in reducing symptoms and progression of hip osteoarthritis.

c. In October 2008, the American College of Rheumatology's *Journal, Arthritis & Rheumatism*, published a report on a double blind

study conducted at multiple centers in the United States examining joint space width loss with radiograph films in patients who were treated with glucosamine hydrochloride. The authors concluded that after two years of treatment with this supplement, the treatment did not demonstrate a clinically important difference in joint space width loss. Sawitzke et al., Glucosamine for Pain in Osteoarthritis: Why do Trial Results Differ?, Arthritis Rheum. 58:3183-3191 (2008).

d. In March 2009, Harvard Medical School published a study conclusively proving that the ingestion of glucosamine could not affect the growth of cartilage. The study took note of the foregoing 2006 and 2008 studies, which "cast considerable doubt" upon the value of glucosamine. The authors went on to conduct an independent study of subjects ingesting 1500 mg of glucosamine, and proved that only trace amounts of glucosamine entered the human serum, far below any amount that could possibly affect cartilage. Moreover, even those trace amounts were present only for a few hours after ingestion. The authors noted that a 1986 study had found no glucosamine in human plasma after ingestion of four times the usual 1500 mg of glucosamine chloride or sulphate. Silbert, Dietary Glucosamine Under Question, Glycobiology 19(6):564-567 (2009).

e. In April 2009, the Journal of Orthopaedic Surgery published an article entitled, "Review Article: Glucosamine." The article's authors concluded that, based on their literature review, there was "little or no

evidence" to suggest that glucosamine was superior to a placebo even in slowing down cartilage deterioration, much less rebuilding it. Kirkham, et al., Review Article: Glucosamine, Journal of Orthopaedic Surgery, 17(1): 72-6 (2009).

19. To date, there are only two studies purporting to claim that the ingestion of glucosamine can affect the growth or deterioration of cartilage, both sponsored by a glucosamine supplement manufacturer: Pavelka et. al. Glucosamine Sulfate Use and Delay of Progression of Knee Osteoarthritis, Arch. Intern. Med., 162: 2113-2123 (2002); Reginster et. al. Long-term Effects of Glucosamine Sulphate On Osteoarthritis Progress: A Randomised, Placebo-Controlled Clinical Trial, Lancet, 357: 251-6 (2001). As noted in the April 2009 Journal of Orthopaedic Surgery article, the methodologies in those studies had "inherently poor reproducibility," and even minor changes in posture by the subjects during scans could cause false apparent changes in cartilage. The authors of the Journal of Orthopaedic Surgery article explained the manufacturer-sponsored studies' findings by noting that "industry-sponsored trials report positive effects more often than do nonsponsored trials and more find pro-industry results."

20. There is no study that supports the claim that glucosamine, chondroitin and/or methylsulfonylmethane, either alone or in combination, will restore, rebuild, renew or rejuvenate joint cartilage that has broken down or worn away.

21. Rexall sells its Osteo Bi-Flex line of products in the United States as a dietary supplement in the United States. The Osteo Bi-Flex products are not regulated as a drug.

22. Rexall sells its Osteo Bi-Flex line of products without any competent and reliable scientific evidence that glucosamine, chondroitin and/or and methylsulfonylmethane will help to "renew cartilage." At no time has Rexall had any competent, reliable or scientific evidence to

support its claim that its Osteo Bi-Flex line of products will help “renew cartilage.” Rexall lacked a reasonable basis to represent to consumers that its Osteo Bi-Flex products help “renew cartilage,” and did not have a reasonable basis to make the express claim that its Osteo Bi-Flex products will help “renew cartilage.” It lacks adequate evidence to substantiate its claim that its Osteo Bi-Flex products help “renew cartilage,” and therefore lacks any reasonable basis for the claim that the products help “renew cartilage.”

23. Plaintiff has purchased Osteo Bi-Flex products. In April 2011, he purchased “Osteo Bi-Flex Glucosamine Chondroitin with 5-Loxin with MSM Hyaluronic Acid ‘Easy to Swallow Smooth Cap™,’” 144 coated caplets from BJ’s Wholesale Club. Prior to this purchase, he purchased “Osteo Bi-Flex Triple Strength 2 Per Day” approximately every thirty (30) days during the class period. He purchased most of the Osteo Bi-Flex products from Walmart or BJ’s Wholesale Club, and purchased the products for his personal use. The packages containing the Osteo Bi-Flex products that Plaintiff purchased all contained the statement that the product helps “renew cartilage.”

24. Plaintiff purchased the Osteo Bi-Flex products because he believed, based upon the packaging, that the products would help renew or rebuild the cartilage in his knee. When he purchased the Osteo Bi-Flex products, Plaintiff believed that they would help renew and rebuild the cartilage in his knee based upon the statements contained on the packages containing the products. His belief that the products would help “renew cartilage” in his knee was reasonable because Rexall, as a manufacturer and distributor of dietary supplements throughout the United States, has superior knowledge, skill and expertise than Plaintiff to appreciate the truth or falsity of the statement that the products help “renew cartilage.” And he reasonably relied upon the statement that the products would “renew cartilage” when he purchased the products.

25. Plaintiff would not have bought the Osteo Bi-Flex products if he had known that they would not help "renew" his cartilage.

CLASS ACTION ALLEGATIONS

26. Plaintiff seeks to be appointed as class representative of a class composed of and defined as follows:

All persons who bought any Osteo Bi-Flex product in Massachusetts, and did not resell it during the period from August 10, 2007 through the present. Excluded from the Class are the Defendant and any Judge presiding over this matter and the members of his or her immediate family. Also excluded from this class are the legal representatives, heirs, successors and attorneys of any excluded person or entity, and any person acting on behalf of any excluded person or entity.

27. This action is appropriately suited for a class action. Plaintiff is informed, believes and thereon alleges that the Class is sufficiently numerous, such that a class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Massachusetts purchasers of the Osteo Bi-Flex products is impractical.

28. This action involves questions of law and fact common to the Class. In marketing the Osteo Bi-Flex products, Defendant engaged in a systematic course of misrepresenting the products to Massachusetts consumers. Such common issues of law and fact include but are not limited to:

- a. Whether the representation that Osteo Bi-Flex products help "renew cartilage" was and is likely to mislead consumers;
- b. Whether failing to disclose that Osteo Bi-Flex products would not promote renewal of cartilage was likely to mislead consumers;
- c. Whether Defendant made false or misleading representations regarding the effectiveness of the Osteo Bi-Flex products;
- d. Whether Defendant represented that the Osteo Bi-Flex products have benefits which they do not have;

- e. Whether Defendant represented that the Osteo Bi-Flex products were of a particular standard or quality when they were not;
 - f. Whether Defendant advertised the Osteo Bi-Flex products with intent not to sell it as advertised;
 - g. Whether, as a result of Defendant's misconduct, the Class is entitled to equitable relief, including restitution and injunctive relief;
 - h. Whether the Class obtained the benefit of their bargain in purchasing the Osteo Bi-Flex products;
 - i. Whether Defendant was unjustly enriched in collecting money from sales of the Osteo Bi-Flex products; and
 - j. Whether, as a result of Defendant's misconduct, the Class is entitled to damages.
29. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and available remedies.

30. Plaintiff's claims are typical of the claims of members of the Class, and Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff purchased Osteo Bi-Flex products, and suffered an injury-in-fact as a result of Defendant's conduct, as did all Class members. Plaintiff's interests are coincident with and not antagonistic to those of the other members of the Class. Plaintiff is represented by counsel who is competent and experienced in the prosecution of consumer class action litigation.

31. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated purchasers of the Osteo Bi-Flex products to adjudicate simultaneously their common claims in a single forum in an efficient manner, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication

of relatively small claims by many members of the Class who could not afford individually to litigate the claims pleaded in this Complaint. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION
(Violations of Unfair Trade Practices Act, Mass. Gen. Laws ch. 93A)

32. Plaintiff hereby realleges, and incorporates by reference as though set forth fully herein, the allegations contained in Paragraphs 1 through 31.

33. Through their conduct described above, including but not limited to breaching the express warranty that the Osteo Bi-Flex products help "renew cartilage," Defendant has engaged in deceptive acts and practices in violation of the Massachusetts Unfair Trade Practices Act, Mass. Gen. Laws ch. 93A §§ 2 et seq. ("MUTPA"), the stated terms and intent of which is to protect consumers from unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.

34. Plaintiff satisfied the demand requirement set forth in Mass. Gen. Law. Ch 93A §9(3). Plaintiff sent a written demand letter to Defendant on May 12, 2011, which was received by Defendant, and the claim asserted herein has not been compromised or adjusted.

35. Representing that the Osteo Bi-Flex products help "renew cartilage" when there is not competent or reliable scientific evidence substantiating that claim is deceptive, and has the capacity, tendency and effect of deceiving reasonable consumers who purchase the products. Reasonable consumers would believe that the Osteo Bi-Flex products help renew cartilage, based upon Defendant's misrepresentations to that effect.

36. Defendant knew, or should have known, that the representation that its Osteo Bi-Flex products help "renew cartilage" was not substantiated by competent and reliable scientific evidence.

37. Defendant made, and makes, the representation that its Osteo Bi-Flex products help "renew cartilage" with the intent to induce consumers, and members of the class sought herein, to purchase the products by causing them to rely on the representation that the products will help "renew cartilage."

38. Defendants' unfair or deceptive practices were a willing and knowing violation of MUTPA.

39. Plaintiff and the Class have suffered an ascertainable loss of money or property as a result of Defendant's actions.

40. By reason of the foregoing, Defendant has violated MUTPA and is liable to Plaintiff and the Class, pursuant to Mass. Gen. Laws ch. 93A §§ 2 et seq., for the damages that they have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial but not less than \$25.00 per consumer purchase, plus trebling and attorneys' fees.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

41. Plaintiff hereby realleges, and incorporates by reference as though set forth fully herein, the allegations contained in Paragraphs 1 through 31.

42. Plaintiff and the Class have conferred benefits on Defendant by paying money for the Osteo Bi-Flex products.

43. Defendant knowingly and willingly accepted monetary benefits from Plaintiff and the Class, but Defendant did not honor its obligations. Rather, Defendant benefited from the sales of the Osteo Bi-Flex products without providing the value promised.

44. Under the circumstances described herein, it is inequitable for Defendant to retain the full monetary benefit at the expenses of Plaintiff and the Class.

45. By engaging in the conduct described above, Defendant has been unjustly enriched at the expense of Plaintiff and the Class, and is required, in equity and good conscience, to compensate Plaintiff and the Class for harm suffered as a result of its actions.

46. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and the Class have suffered injury and are entitled to reimbursement, restitution, and disgorgement by Defendant of the benefit conferred by Plaintiff and the Class.

THIRD CAUSE OF ACTION
(Breach of Express Warranty)

47. Plaintiff hereby realleges, and incorporates by reference as though set forth fully herein, the allegations contained in Paragraphs 1 through 31.

48. Plaintiff and each member of the Class formed a contract with Defendant at the time Plaintiff and the other members of the Class purchased the Osteo Bi-Flex products. The terms of that contract include the promises and affirmations of fact made by Defendant on its product labels. The product labeling constitutes an express warranty which became part of the basis of the bargain. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiff and the Class.

49. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing a product which could provide the promised benefits as described above.

50. As a result of Defendant's breach of its contract and warranties, Plaintiff and the Class have been damaged in the amount of the purchase price of the Osteo Bi-Flex products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that the Court enter judgment against Defendants as follows:

1. Certifying this action as a class action as soon as practicable, with a class as defined above;
2. On Plaintiff's First Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial, trebled;
3. On Plaintiff's Second Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial;
4. On Plaintiff's Third Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial;
5. Awarding Plaintiff and the Class interest, costs and attorneys' fees; and
6. Awarding Plaintiff and the Class such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure Rule 38, Plaintiff hereby demands a trial by jury.

Dated: White Plains, New York
December 19, 2011

Respectfully Submitted,

/s/ Peter N. Freiberg
D. Gregory Blankinship, BBO No. 655430
Jeffrey I. Carton (Admitted *Pro Hac Vice*)
Peter N. Freiberg (Admitted *Pro Hac Vice*)
MEISELMAN, DENLEA, PACKMAN,
CARTON & EBERZ P.C.
1311 Mamaroneck Avenue
White Plains, New York 10605
Telephone: (914) 517-5000
Facsimile: (914) 517-5055
gblankinship@mdpcelaw.com
jcarton@mdpcelaw.com
pfreiberg@mdpcelaw.com

Attorneys for Plaintiff

245428.docx

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on today's date.

/s/ Peter N. Freiberg

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RICHARD JENNINGS, on behalf of himself
And all others similarly situated,

Civil Action No.: 1:11-cv-11488-WGY

Plaintiff,

**SECOND AMENDED CLASS
ACTION COMPLAINT**

-against-

REXALL SUNDOWN, INC.

**LEAVE TO FILE GRANTED
ON JANUARY 18, 2012**

Defendant.

Jury Trial Demanded

Plaintiff, by and through his counsel, Meiselman, Denlea, Packman, Carton & Eberz P.C., respectfully files this Second Amended Class Action Complaint on behalf of himself and a class of similarly-situated individuals who have purchased an "Osteo Bi-Flex" product manufactured by Defendant from August 10, 2007 through the present.

PARTIES

1. Plaintiff Richard Jennings ("Jennings") is a natural person of full age of majority who is domiciled and residing in Oak Bluffs, Massachusetts.
2. Defendant Rexall Sundown, Inc. ("Rexall") is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Bohemia, New York.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). Jurisdiction is proper because (1) the matter in controversy

exceeds the sum or value of \$5,000,000.00, exclusive of interests and costs and (2) the named Plaintiff and the Defendant are citizens of different states. 28 U.S.C. §1332(d)(2)(A).

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) because a substantial part of the events giving rise to the claim occurred within this judicial district, and because defendant has marketed and sold the products at issue in this action within this judicial district and has done business within this judicial district.

GENERAL ALLEGATIONS

5. Rexall is the manufacturer and seller of a wide variety of vitamin, nutritional and dietary supplement products.

6. One of Rexall's most successful products is a line of dietary supplements sold under the trademarked name Osteo Bi-Flex. The Osteo Bi-Flex product line is a line of products that contain, among other contents, glucosamine and chondroitin. The annual sales of the Osteo Bi-Flex products are in excess of \$100 million. The Osteo Bi-Flex products are sold nationwide in drug stores, supermarkets, warehouse clubs and mass merchandisers, including Wal-Mart, Sam's Club, CVS, Duane Reade and Target. Rexall extensively advertises its Osteo Bi-Flex product line in consumer and trade media with national distribution, and also maintains a website devoted exclusively to its Osteo Bi-Flex line of products (<http://www.osteobiflex.com>).

7. All of Rexall's products in its Osteo Bi-Flex product line contain glucosamine, chondroitin and/or a methylsulfonylmethane.

8. The Osteo Bi-Flex product line currently includes the following:

Osteo Bi-Flex One Per Day Glucosamine HCl & Vitamin D3 with 5-Loxin Advanced;

Osteo Bi-Flex Triple Strength Glucosamine Chondroitin MSM with 5-Loxin Advanced;

Osteo Bi-Flex Double Strength Glucosamine Chondroitin MSM with 5-Loxin Advanced;

Osteo Bi-Flex Triple Strength Glucosamine Chondroitin MSM with 5-Loxin Advanced with Vitamin D3 2000 IU;

Osteo Bi-Flex Glucosamine Chondroitin with 5-Loxin Advanced MSM with Hyaluronic Acid;

Osteo Bi-Flex Glucosamine Chondroitin Energy Formula with 5-Loxin Advanced;

Osteo Bi-Flex Regular Strength Glucosamine Chondroitin Complex; and

Osteo Bi-Flex Advanced Glucosamine Chondroitin MSM with 5-Loxin Advanced.

9. Millions of adults in the United States live with arthritis, a disease involving the breakdown of cartilage in joints, or other orthopedic disorders in which cartilage in joints is broken down over time and causes bones in those joints to grind against each other. Cartilage normally protects a joint, allowing it to move smoothly, and also absorbs shock when pressure is placed on the joint. Without normal amounts of cartilage, the bones in the joint rub together, causing pain, swelling and stiffness. These conditions are often extremely painful and result in limitations on motion, and most often impact elderly persons.

10. In response to the desperation of consumers suffering from painful and debilitating arthritic and other orthopedic conditions, dietary supplement manufacturers have rolled out a variety of products promising relief from chronic pain. Manufacturers pushing for more market share have not been content to advertise pain relief, and have been making more and more outlandish promises to consumers, including promises that supplements can promote joint health and mobility through structural changes to joints.

11. Defendant Rexall is one such manufacturer. Rexall manufactures, markets, and sells the Osteo Bi-Flex products, which contain glucosamine hydrochloride, chondroitin and/or a methylsulfonylmethane.

12. Glucosamine is an amino sugar that the body distributes in cartilage. It is produced commercially from crustacean exoskeletons, and is one of the most common, non-vitamin dietary supplements sold in the United States.

13. Chondroitin is a sulfated glycosaminoglycan composed of a chain of alternating sugars. Chondroitin sulfate is a structural component of cartilage and provides resistance to compression.

14. Methylsulfonylmethane is an organic compound containing sulfur, and is considered to be a relatively inert chemical compound.

15. None of these ingredients will help build or renew cartilage or repair damage to joints.

16. Nonetheless, Rexall promotes that its Osteo Bi-Flex products will help "renew cartilage." The packages that the Osteo Bi-Flex products come in contain, in a boxed section of the packaging and also in a textual section of the packaging, the statement that the products help "renew cartilage." In fact, the package that Osteo Bi-Flex Glucosamine Chondroitin with 5-Loxin Advanced MSM with Hyaluronic Acid comes in actually claims that the product "helps build cartilage." The website that advertises the Osteo Bi-Flex line of products, which is sponsored by Rexall, states, as part of the advertising for several of the products contained in the product line, that "glucosamine helps rejuvenate joint cartilage."

17. The statement that the Osteo Bi-Flex products help "renew cartilage" is false and misleading. There is no scientifically sound study demonstrating that the Rexall Osteo Bi-Flex

products can help renew cartilage. The statement that the Osteo Bi-Flex products help "renew cartilage" is not substantiated.

18. There is no study or literature substantiating, or even suggesting, that glucosamine, chondroitin, or methylsulfonylmethane can help renew or rejuvenate cartilage, as studies on the topic have confirmed:

- a. In February 2006, the New England Journal of Medicine published a report on a double blind study addressing in part the efficacy of ingesting glucosamine hydrochloride 1500mg. Clegg, et al. Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful Knee Osteoarthritis. *New Eng. J. Med.* 354:795-808 (Feb. 2006). The study concluded that there was no showing that the supplement was effective in treating osteoarthritis.
- b. In February 2008, the Annals of Internal Medicine published a study entitled, "Effect of Glucosamine Sulfate on Hip Osteoarthritis: a Randomized Trial." *Annals of Internal Medicine* 2008 Feb 19;148(4): 268-277. The article published the results of a study which examined whether glucosamine sulfate has an effect on the symptoms and structural progression of hip osteoarthritis during two years of treatment; the conclusion reached from the study was that glucosamine sulfate was no better than placebo in reducing symptoms and progression of hip osteoarthritis.
- c. In October 2008, the American College of Rheumatology's *Journal, Arthritis & Rheumatism*, published a report on a double blind